

1 [Real Property Lease Amendment - BGCA Management, LLC - Bill Graham Civic Auditorium,
2 99 Grove Street - \$25,000 per Month Base Rent]

3 **Resolution authorizing and approving an Amendment to Lease with BGCA**
4 **Management, LLC, a Delaware limited liability company, for Bill Graham Civic**
5 **Auditorium, at 99 Grove Street; increasing monthly base rent to \$25,000; requiring**
6 **tenant to be responsible for all utilities and a minimum of \$10,250,000 in building**
7 **improvements, new participation rent calculation, and other changes as set forth in**
8 **Amendment; with no change to the term length to expire on December 31, 2030, to**
9 **commence upon approval by the Board of Supervisors and Mayor.**

10
11 WHEREAS, On July 1, 2010, the Mayor and Board of Supervisors approved Resolution
12 No. 289-10 authorizing a lease of the Bill Graham Civic Auditorium ("Building") located at 99
13 Grove Street to BGCA Management, LLC ("Tenant") for a term of approximately 20 years,
14 with two five-year extension options, as a concert and special events venue ("Lease"); a copy
15 of the Lease and Resolution No. 289-10 are located in Board File No. 100649; and

16 WHEREAS, The Lease includes: (i) an expiration date of December 31, 2030, subject
17 to Tenant's two options to extend, each for an additional five years, at fair market rent; (ii)
18 base rent of \$8,333.33 per month, increased by 2.5% each year subject to a rent abatement
19 period during the construction of Initial Improvements; (iii) participation rent equal to the sum
20 of (A) 50% of net naming rights revenue (from naming the internal arena, not the Building) in
21 excess of \$500,000, (B) \$5 per ticket, increased each year per CPI, for each ticket sold in
22 excess of 337,000 per year, and (C) \$2,500, increase each year per CPI, for each corporate
23 event, subject to renegotiation after Lease Year 10; and, (iv) acceptance of the Building "as is"
24 without representation or warranty; and

1 WHEREAS, Since 2010, Tenant has not received any naming rights revenue and has
2 only sold over 337,000 tickets one year in 2016 to trigger those elements of participation rent;
3 and

4 WHEREAS, The Lease requires Tenant to make certain interior renovations and capital
5 improvements to the Building in three phases (the "Initial Improvements"), as set forth in the
6 Lease and exhibits attached to it, and to spend at least \$10,000,000 on the Initial
7 Improvements; and

8 WHEREAS, The City has granted several extensions for the performance of the
9 required improvements, and as of the date of the Amendment to Lease, Tenant has
10 performed approximately \$564,475 of the agreed upon required capital improvements,
11 together with other repairs and upgrades for a total City approved improvement expenditure of
12 approximately \$1,598,803; and

13 WHEREAS, Under the Lease, the City retains the right to use the Building 50 days per
14 year for civic events and other City purposes; the City is not required to pay rent, but is
15 required to pay for the costs of use, such as cleaning, security during these City events; and

16 WHEREAS, During the time period between 2010 and the present, the City has not
17 used more than 24 City days in any one year period; and

18 WHEREAS, The Lease requires Tenant to pay for all utilities in connection with
19 Tenant's use of the Building, but if Tenant's utility costs exceed \$200,000, as adjusted by CPI,
20 in any Lease year, then Tenant receives a rent credit of 50% of such excess costs; and

21 WHEREAS, As a result of significant utility rate charges since lease negotiations nearly
22 a decade ago, Tenant has received a rent credit for excess utility costs for each year since
23 2011, resulting in a rent credit of over \$500,000 or five years of current base rent; and
24
25

1 WHEREAS, After several years of experience hosting concerts and other events in the
2 Building, Tenant has proposed converting that portion of the Building presently known as Polk
3 Hall into an approximately 1,200 seat club/small concert hall; and

4 WHEREAS, The City Administrator, as Landlord, is willing to allow Tenant to construct
5 the proposed small venue in the Building; and

6 WHEREAS, The Real Estate Division has negotiated an amendment to certain
7 sections of the Lease in substantially the form on file with the Clerk of the Board of
8 Supervisors in File No. 171322, which is hereby declared to be a part of this Resolution as if
9 set forth fully herein (the "Amendment to Lease") to allow the construction of a smaller venue
10 in Polk Hall, increase in rent, change the terms of participation rent, require Tenant to pay all
11 utilities without any rent credit, and require Tenant to make certain improvements in the
12 Building; and

13 WHEREAS, Under the Amendment to Lease, base rent shall increase to \$25,000 per
14 month from the current \$9,765.59 per month; and

15 WHEREAS, Under the Amendment to Lease, participation rent for naming rights
16 remains the same, City's per ticket revenue has been deleted, and Tenant shall pay to City
17 \$3,500 for each corporate event and other Non-Ticketed Events held in the main auditorium
18 and \$2,500 for each Non-Ticketed Event held solely on or in one or more of the halls (i.e., the
19 new Polk Hall) for which Tenant receives revenue; these amounts to increase yearly in
20 accordance with a CPI adjustment; and

21 WHEREAS, Under the Amendment to Lease, those sections related to the Initial
22 Improvements have been deleted and substituted with Tenant performing at least
23 \$10,250,000 in Building Improvements, within three to ten years, including: (i) \$4,000,000 for
24 Polk Hall Improvements, (ii) at least \$3,500,000 for Main Arena Improvements, (iii) at least
25 \$750,000 for Freight Elevator Work; (iv) at least \$1,000,000 for Polk Street Passenger

1 Elevator Replacement; and (v) at least \$1,000,000 for remaining Elevator Replacement Work;
2 and

3 WHEREAS, Under the Amendment to Lease, City days has been reduced to up to 25
4 days per year; and

5 WHEREAS, Under the Amendment to Lease, Tenant shall pay for all utilities in
6 connection with Tenant's use of the Building without receiving any rent credit; and

7 WHEREAS, Other clauses in the Amendment to Lease update required City provisions;
8 and

9 WHEREAS, The amendments to the certain sections of the Lease shall commence
10 upon approval by the Board of Supervisors and Mayor; now, therefore, be it

11 RESOLVED, That in accordance with the recommendation of the Director of Property
12 and the City Attorney, the Director of Property on behalf of the City, as Landlord, be and is
13 hereby authorized to take all actions necessary to execute the Amendment to Lease at Bill
14 Graham Civic Auditorium, for the remainder of the initial term and the two five year options
15 subject to the enactment of a resolution by the Board of Supervisors and the Mayor, in their
16 respective sole and absolute discretion, approving and authorizing the same; and, be it

17 FURTHER RESOLVED, The monthly base rent for the remainder of the initial twenty
18 year term shall be \$25,000 per month, subject to annual adjustments of 2.5% percent,
19 exclusive of all utilities and services for which Tenant is solely responsible without any rent
20 credit, as set forth in the Amendment to Lease; and, be it

21 FURTHER RESOLVED, The Board of Supervisors approves the Amendment to Lease
22 in substantially the form in the Board's File and authorizes the Director of Property to take all
23 actions, on behalf of City, to enter into any further amendments or modifications (including
24 without limitation, the exhibits) to the Lease that the Director of Property determines, in
25 consultation with the City Attorney, are in the best interests of the City, do not materially

1 increase the obligations or liabilities of the City, and are necessary or advisable to complete
2 the transaction and effectuate the purposes and intent of this resolution and are in compliance
3 with all applicable laws, including City's Charter; and, be it

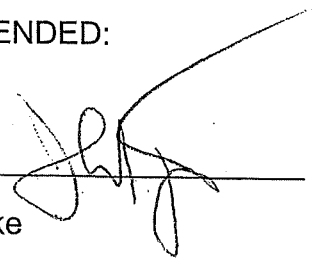
4 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical
5 in light of the existing Lease Agreement between City and Tenant for the Building; and, be it

6 FURTHER RESOLVED, That any action heretofore taken by any City employee or
7 official with respect to the exercise of the Amendment to Lease as set forth herein is hereby
8 approved, confirmed and ratified; and, be it

9 FURTHER RESOLVED, That within thirty (30) days of the Amendment to Lease
10 agreement being fully executed by all parties, the Director of Property shall provide a copy of
11 the Amendment to Lease to the Clerk of the Board to include into the official file.
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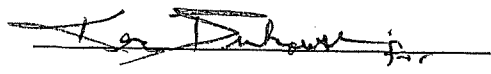
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RECOMMENDED:



John Updike
Director of Property
Real Estate Division

RECOMMENDED:



Naomi Kelly
City Administrator

Item 4
File 17-1322

Department:
Real Estate Division

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would authorize an amendment to the existing lease of the Bill Graham Civic Auditorium between the City as landlord and BGCA Management, LLC as tenant to: (1) increase the annual base rent to \$300,000 per year, with annual adjustments of 2.5 percent; and (2) require the tenant to be responsible for all utilities and a minimum of \$10,250,000 in building improvements.

Key Points

- In July 2010, the Board of Supervisors approved the lease of the Bill Graham Civic Auditorium to BGCA Management, LLC for a term of approximately 20 years through December 31, 2030, with two five-year extension options, as a concert and special events venue.
- The tenant is interested in making improvements to Polk Hall to install a smaller venue. In amending the lease to include the new venue, City staff renegotiated certain terms that are no longer favorable to the City.
- The proposed lease amendment increases the base rent, increases the participation for non-ticketed events, and eliminates the tenant improvement rent credit and utility rent credit provisions.
- Although City Administrative Code Section 23.33 provides for leases of City property to be awarded through competitive bidding procedures, the Budget and Legislative Analyst finds it reasonable that a new competitive bidding process would be impractical.

Fiscal Impact

- Under the existing lease, the utility rent credit is anticipated to exceed base and participation rent in each lease year, resulting in net rent revenue to the City of \$0.
- The proposed amended lease is estimated to result in total rent revenue to the City of \$5,679,808 over the remaining 13 years of the lease.
- Under the proposed lease amendment, the tenant agrees to complete at least \$10 million in improvements including approximately \$6 million in improvements that are not related to the conversion of Polk Hall, but these expenses will not be credited against participation rent. To date, the tenant has incurred a total of \$1,034,328 in costs that would be credited towards the \$6 million improvement requirement.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Administrative Code 23.30 states that City property shall be leased to the highest responsible bidder in accordance with competitive bidding procedures and for no less than the Director of Property's opinion of market rent if there is no appraisal, unless the Board of Supervisors finds by resolution that (a) competitive bidding procedures are impractical or impossible, or (b) a lesser sum will further a public purpose.

City Administrative Code Section 23.33 provides for leases of City property to be awarded through competitive bidding procedures unless competitive bidding procedures are impractical or impossible.

BACKGROUND

In July 2010, following a competitive bidding process, the Board of Supervisors approved the lease of the Bill Graham Civic Auditorium located at 99 Grove Street to BGCA Management, LLC, an affiliate of Another Planet Entertainment (tenant), for a term of approximately 20 years, with two five-year extension options, as a concert and special events venue (File No. 10-0649; Resolution No. 289-10).

The lease includes (1) base rent of \$100,000 per year, with an annual increase of 2.5 percent per year subject to a rent abatement period during the construction of building improvements; and (2) participation rent of the sum of (i) 50 percent of naming rights revenue in excess of \$500,000, (ii) \$5 per ticket, increased each year by CPI, for each ticket sold in excess of 337,000 per year, and (iii) \$2,500, increased each year by CPI, for each non-ticketed event. Since 2010, the tenant has not received any naming rights revenue and has sold over 337,000 tickets only in 2016.

The lease also requires the tenant to spend at least \$10 million on interior renovations and capital improvements to the building, with a credit against participation rent if the tenant completes the improvements by March 10, 2020. The City has granted several extensions for the performance of the required improvements, of which the City has approved total improvement expenditures of approximately \$1.6 million to date. Under the lease, the credit is only applied once all of the \$10 million in improvements have been constructed, so nothing has been credited against participation rent to date.

The City retains the right to use the building 50 days per year for civic events without paying rent, but the City is required to pay for the costs of use, such as cleaning and security during the events. Since 2010, the City has not used more than 24 days in any lease year.

The lease requires the tenant to pay for utilities, but if utility costs exceed \$200,000, adjusted each year by CPI, in any lease year, then the tenant receives a rent credit of 50 percent of such excess costs. Due to a significant increase in utility rate charges since the lease was negotiated, the tenant has received a rent credit for excess utility costs each year since 2011, resulting in a rent credit of over \$500,000, or equivalent to five years of current base rent. The utility rent credit has exceeded the sum of base rent and participation rent since 2016. As a result, the City is not projected to receive revenue under the original lease structure over the remaining term of the lease.

The major terms of the existing lease are summarized in Table 1 below.

Table 1: Terms of Existing Lease

Term	Existing Lease
Expiration Date	December 31, 2030
Options to Extend	Two five-year options
Premises	Bill Graham Civic Auditorium, excluding Room 202
Annual Base Rent	\$100,000 (starting in 2010)
Participation Rent	<ul style="list-style-type: none"> • 50 percent of naming rights revenue in excess of \$500,000 • \$5 for each ticket sold in excess of 337,000 tickets per year • \$2,500 for each non-ticketed event
Annual Rent Increase	2.5 percent per year
Tenant Improvements	Tenant receives a credit against participation rent for up to \$10 million in improvements if tenant applies for credit by March 10, 2020
Utilities	Tenant receives a credit against base and participation rent in the amount of 50 percent of utility costs that exceed \$200,000 in a given year
Annual Days for City Use	Up to 50 days

According to Ms. Claudia Gorham, Assistant Director of Real Estate, the renegotiation of the existing lease was triggered by the tenant’s interest in making improvements to Polk Hall to install a smaller venue. In amending the lease to include the new venue, City staff renegotiated certain terms that are no longer favorable to the City.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize an amendment to the existing lease of the Bill Graham Civic Auditorium at 99 Grove Street between the City as landlord and BGCA Management, LLC as tenant to:

- (1) Increase the annual base rent to \$300,000 per year, with annual adjustments of 2.5 percent; and
- (2) Require the tenant to be responsible for all utilities and a minimum of \$10,250,000 in building improvements.

The proposed lease amendment will include Room 202/Polk Hall within the leased premises. According to Ms. Gorham, although the City intended to use the space for a small office, setting up the space with equipment, furniture, and City-secured interest was too costly and Room 202/Polk Hall has never been occupied and rarely used by the City during the existing lease term.

The proposed lease amendment increases the participation rent for non-ticketed events from \$2,500 (starting in 2010, increasing 2.5 percent per year), to \$3,500 for each non-ticketed

event in the Main Hall and \$2,500 for each non-ticketed event in Polk Hall (starting in 2018, increasing 2.5 percent per year).¹

The proposed lease amendment eliminates the tenant improvement rent credit provision, including for previously completed improvements. As a result, the tenant would receive no participation rent credit for any previously completed or future completed tenant improvements.

The proposed lease amendment eliminates the utility rent credit. As noted above, due to the substantial increase in utility rate charges since the original lease was negotiated, the tenant did not owe base rent or participation rent in 2016 and 2017.

As noted above, the City has not used more than 24 days in any lease year, so the City days are reduced to 25 days per year under the proposed lease amendment.

Table 2 below summarizes the major lease terms of the proposed amended lease, with changes shown in underline.

Table 2: Terms of Proposed Lease Amendment

Term	Amended Lease
Expiration Date	December 31, 2030
Options to Extend	Two five-year options
Premises	Bill Graham Civic Auditorium, <u>including Room 202/Polk Hall</u>
Annual Base Rent	<u>\$300,000</u> (starting in 2018)
Participation Rent	<ul style="list-style-type: none"> • 50 percent of naming rights revenue in excess of \$500,000 • <u>\$3,500 for each non-ticketed event in the Main Hall</u> • <u>\$2,500 for each non-ticketed event in Polk Hall</u>
Annual Rent Increase	2.5 percent per year
Tenant Improvements	<u>No rent credit; tenant must complete at least \$10.25 million in improvements, including \$6 million in improvements not related to the conversion of Polk Hall</u>
Utilities	<u>No credit; tenant pays for utilities</u>
Annual Days for City Use	<u>Up to 25 days</u>

FISCAL IMPACT

Comparison of Existing Lease and Amended Lease Revenue

Under the existing lease, the utility rent credit is anticipated to exceed base and participation rent in each year, resulting in net rent revenue to the City of \$0. Under the proposed amended

¹ As of 2017, the initial rent of \$2,500 for each non-ticked event in the Bill Graham Civic Auditorium was \$2,972, based on annual increases of 2.5 percent.

lease, the utility rent credit is eliminated and base and participation rents are increased, resulting in estimated total rent revenue to the City of \$5,679,808 over the remaining 13 years of the lease. A comparison of projected revenues over the remaining 13 years of the lease is shown in Table 3 below.

Table 3: Projected Revenues of Existing and Amended Lease

Year	Existing Lease				Amended Lease		
	Base Rent	Participation Rent	Utility Rent Credit	Total	Base Rent	Participation Rent	Total
2018	\$120,117	\$27,140	\$(192,649)	\$0	\$300,000	\$31,500	\$331,500
2019	123,120	27,818	(197,465)	0	307,500	45,100	352,600
2020	126,198	28,514	(202,402)	0	315,188	54,107	369,295
2021	129,353	29,227	(207,462)	0	323,067	63,537	386,604
2022	132,586	29,957	(212,648)	0	331,144	73,404	404,547
2023	135,901	30,706	(217,964)	0	339,422	83,724	423,147
2024	139,299	31,474	(223,413)	0	347,908	94,515	442,423
2025	142,781	32,261	(228,999)	0	356,606	105,793	462,399
2026	146,351	33,067	(234,724)	0	365,521	111,484	477,005
2027	150,009	33,894	(240,592)	0	374,659	114,271	488,930
2028	153,759	34,741	(246,607)	0	384,025	117,128	501,153
2029	157,603	35,610	(252,772)	0	393,626	120,056	513,682
2030	161,544	36,500	(259,091)	0	403,467	123,057	526,524
Total	\$1,818,620	\$410,911	\$(3,104,737)	\$0	\$4,542,133	\$1,137,675	\$5,679,808

Participation Rent

Two of the participation rent provisions under the existing lease, (1) naming rights revenue and (2) fees on tickets sold above a threshold, are not included in the projections above because the tenant has not received any naming rights revenue and does not anticipate naming rights revenue through the remainder of the lease, and the tenant does not anticipate exceeding the ticket sale threshold in the future. According to the tenant, the higher ticketed sales in 2016 are partly attributed to the unavailability of Moscone Center due to renovations. The tenant anticipates ticket sales will decline beginning in 2018 due to new competitor venues that have recently come online, such as the San Francisco Armory, with a larger decline in 2019 when construction of the Chase Center is completed.

The participation rent projections shown in Table 3 include the assumption that there will be 9 non-ticketed events each year in the Main Hall. The tenant intends to renovate and rent Polk Hall as a separate venue for private events and concerts. The tenant anticipates holding 5 non-ticketed events in Polk Hall in 2019 increasing each year to an average of 24 events per year beginning in 2026.

Tenant Improvements

Under the existing lease, the tenant is eligible for up to \$10.25 million in credit against participation rent for each dollar expended on building improvements within 10 years of lease

commencement (until March 2020). To date, the tenant has completed \$1.6 million in improvements that have been approved by the City.

As noted above, the proposed lease amendment eliminates the tenant improvement rent credit provision. Under the proposed lease amendment, the tenant agrees to complete at least \$10 million in improvements including approximately \$6 million in improvements that are not related to the conversion of Polk Hall, but these expenses will not be credited against participation rent. Under the amended lease, costs incurred by the tenant in 2015 through 2017 for approved improvements would be credited towards the \$6 million in improvements to the Main Hall required under the proposed amendment. According to Ms. Gorham, the tenant has incurred a total of \$1,034,328 in costs that would be credited towards the \$6 million improvement requirement.

POLICY CONSIDERATION

City Administrative Code Section 23.33 provides for leases of City property to be awarded through competitive bidding procedures unless competitive bidding procedures are impractical or impossible. The original lease between BGCA Management, LLC, and the City was awarded through a competitive bidding process for an initial 20 1/2 year term from approximately July 2010 to December 2030. The existing lease is now being amended because BGCA Management, LLC is requesting to add Room 202/Polk Hall to the lease.

The proposed resolution finds that competitive bidding procedures would be impractical in light of the existing lease agreement between the City and the tenant. The Real Estate Division engaged Century Urban, LLC to perform an economic analysis of the proposed lease amendment compared to the potential revenue to the City under a business-as-usual case where the tenant continues to perform under the existing lease terms. The Century Urban analysis concluded that the business-as-usual case would result in \$0 in base rent and participation rent over the remaining lease term, whereas the amended lease would result in \$5,069,543 in total nominal base rent and participation, or \$3,228,836 in net present value at a 6 percent discount rate.

The Budget and Legislative Analyst finds it reasonable that a new competitive bidding process would be impractical because the lease renegotiation was triggered by a request from the tenant to add space and make improvements to the premises. If the tenant continued business as usual under the existing lease, the City would likely not receive any rent revenue over the remaining 13 years of the lease term, so the amended lease results in a better outcome for the City than the status quo.

RECOMMENDATION

Approve the proposed resolution.

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "Amendment") is made as of December 1, 2017, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City") and BGCA MANAGEMENT, LLC, a Delaware limited liability company ("Tenant").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant entered a lease agreement, dated as of March 10, 2010 (the "Lease"), for the lease of the building known as the Bill Graham Civic Auditorium (the "Premises"), owned by City and located at 99 Grove Street, San Francisco, California. Tenant's obligations under the Lease, up to a Five Million Dollar (\$5,000,000) cap, are guaranteed by Another Planet Entertainment, LLC, a Delaware limited liability company ("Guarantor"), pursuant to the terms of Guaranty Agreement, dated on or about the date of the Lease.

B. Tenant uses the Premises for the purpose of presenting music concerts, theatrical events, cultural and entertainment performances, consumer events, trade shows, spectator sports, corporate meetings, social functions and special events, as more particularly described in the Lease.

C. The Lease requires Tenant to perform certain interior renovations and improvements to the Premises, at a minimum cost of Ten Million Dollars (\$10,000,000), during a three-phase construction period described in the Lease. City has granted several extensions for the performance of the required improvements, and, as of the date hereof, Tenant has performed \$564,475 of the agreed upon required improvements, together with other repairs and upgrades.

D. After several years of experience hosting concerts and other events in the Premises, Tenant has proposed converting that portion of the building presently known as Polk Hall into an approximately 1,500 seat club/small concert hall. The new club would be a separate venue from and operate concurrently with the existing larger main auditorium/arena in the Premises. The room referred to in the Lease as "Room 202", which is reserved for City's use in the Lease, would be incorporated into the new club and would no longer be available for City use as provided in the Lease. Tenant and City believe that the proposed new club would make the Premises an even more vibrant and active venue for concerts and special events, and would optimize the public use and enjoyment of the building.

E. In addition to and in coordination with the Polk Hall improvements, Tenant proposes to make improvements to the electrical system in the Premises and certain other improvements to the main auditorium, at a total cost of not less than Three Million Five Hundred Thousand Dollars (\$3,500,000), to upgrade the freight elevators in the Premises at a minimum cost of Three Hundred Seventy Five Thousand Dollars (\$375,000) per freight elevator, to replace the three (3) passengers elevators on the Polk Street side of the building at a total cost of not less than One Million Dollars, and to replace the three remaining elevators pursuant to a 10-year plan at a total cost of not less than One Million Dollars (\$1,000,000).

F. City, as Landlord, is willing to allow Tenant to construct the proposed nightclub in the Premises, to credit the cost of the Polk Hall conversion, up to a Four Million Dollar (\$4,000,000) cap, toward the cost of the improvements required by the Lease, and to substitute the Polk Hall improvements and other improvements and replacements proposed by Tenant for the balance of the Initial Improvements originally required by the Lease and not yet performed by Tenant, on the terms and conditions set forth in this Amendment.

G. The parties now desire to amend the Lease to (i) modify the definition of the Initial Improvements to include the improvements required for the Polk Hall conversion and certain other improvements to the Premises, (ii) revise the schedule for the performance of the Initial Improvements, (iii) modify the Base Rent and Participation Rent payable under the Lease, (iv) eliminate the rent credit for utility costs above the Utility Threshold set forth in the Lease, (v) reduce the number of days on which City shall have the right to use the Premises for civic events and other City purposes from fifty (50) days to twenty-five (25) days, and (vi) modify the Lease in certain other respects, all on the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. **Defined Terms.** Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. **Effective Date of Amendment.** This Amendment shall be effective on the date (the "Amendment Effective Date") upon which (i) the Board of Supervisors passes a resolution approving this Amendment, and the Mayor signs such resolution, and (ii) the parties hereto have duly executed and delivered this Amendment.

3. **Confirmation of Effective Date of Lease and Commencement Date of Lease.** City and Tenant confirm that the Effective Date of the Lease, as defined in Section 34 of the Lease, was August 1, 2010, and the Commencement Date of the Lease, as defined in the Basic Lease Information section of the Lease was August 1, 2010.

4. **Reduction in City Days.** Effective as of the Amendment Effective Date, the number of "City Days," as set forth in Section 1.2(b)(i) of the Lease, shall be reduced from "up to fifty (50) days per Lease Year" to "up to twenty-five (25) days per Lease Year".

5. **Utilities.**

a. **Elimination of Rent Credit for Utility Costs in Excess of Utility Threshold.** Effective as of the Amendment Effective Date, Tenant shall be responsible for payment of its utility costs in accordance with the terms of the Lease, including Section 12, "*Utility and Other Services*," as amended herein. References to the City being liable for payment of any utility costs in the Lease, excluding its pro rata share for "City Days," are null and void. Accordingly, (i) Section 12.1(b) of the Lease shall be deleted in its entirety, (ii) the phrase "With potential credits against Base Rent for utilities as set forth in Section 12.1" shall be deleted from the Base Rent section of the Basic Lease Information table of the Lease, (iii) the reference to potential credits against Participation Rent for utilities shall be deleted from the Participation Rent section of the Basic Lease Information table of the Lease, and (iv) the fourth (4th) sentence of Section 1.3(d) of the Lease, which provides that utility cost sharing shall be taken into account in determining fair market value for the Extended Term, shall be deleted.

b. **Request Change of Meter Rate and Utility Rates.** The San Francisco Public Utility Commission ("SFPUC") is the provider of electric services to City property, and the SFPUC's Interconnection Services Department coordinates with Pacific Gas and Electric Company and others to implement such service. In addition to Tenant's entry rights under Section 29 of the Lease, Tenant shall permit City and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, risers, wiring, pipes, and meters. City has requested or will request that the electrical service provider for the Premises change the RG478 electrical meter serving the Premises to A10S-TOU at City's expense. Such meter change shall occur during regular business hours.

Further, if City is able to obtain the electrical rates, fees and other charges applicable to municipal departments and public agencies for a private, for profit, business operating in the Premises, City will endeavor to provide electricity to Tenant at such municipal rate, and the municipal rate for fees and charges.

c. **New Steam Meter.** The City anticipates that it will be converting its current steam system to individual City building meters and will be providing a new meter for the Bill Graham Civic Auditorium. City shall pay for the cost of the new meter. Tenant shall be responsible for payment of any steam use upon installation of the new meter.

6. **Base Rent and Participation Rent.**

a. **Base Rent.** Effective as of the Amendment Effective Date, Annual Base Rent shall be increased to \$300,000, payable in monthly installments of \$25,000 per month and subject to increases as provided in Section 2.2(b) of the Lease commencing at the first anniversary of the Amendment Effective Date, the Base Rent section of the Basic Lease Information section of the Lease shall be amended accordingly, and Section 2.2(a) of the Lease shall be amended as provided in Section 6.c., below. Base Rent payable for the Lease Year in which the Base Rent increases to \$300,000 (i.e. the Lease Year of the Amendment Effective Date) shall be prorated between the Base Rent rate payable prior to such increase and the new \$300,000 annual Base Rent rate.

b. **Participation Rent.** Effective as of the Amendment Effective Date, the provisions of Section 2.3 of the Lease shall be deleted and the following provision shall be substituted therefor:

"2.3 **Participation Rent.**

Tenant agrees to pay to City, as Participation Rent: (i) fifty percent (50%) of the Net Naming Rights Revenue in excess of Five Hundred Thousand Dollars (\$500,000) per Lease Year (subject to a CPI adjustment on each Adjustment Date); and (ii) \$3,500 for each corporate event and other non-ticketed/non-cover charge event for which Tenant receives revenue (each such corporate or other non-ticketed/non-cover charge event, excluding "City Days" events, a "Non-Ticketed Event") held on or in the main auditorium of the Premises with or without the remainder of the Premises and \$2,500 for each Non-Ticketed Event held solely on or in one or more of the halls of the Premises (i.e., the Polk Room (or new Polk Hall) or Larkin Room) for which Tenant receives revenue, provided that on each Adjustment Date such sums shall be increased in accordance with CPI. The City's Director of Property and Tenant shall meet and confer in good faith following the end of the tenth Lease Year in order determine the appropriate amount of Participation Rent for Non-Ticketed Events starting in the eleventh Lease Year and for the remainder of the Initial Term, taking into account the average revenue generated and average expenses incurred in connection with Non-Ticketed Events and the desire to encourage the profitable continuation of Non-Ticketed Events. Any agreement between Tenant and City's Director of Property to adjust the Participation Rent for Nonpaid Entry Events shall be memorialized in writing, which shall be incorporated into this Lease and shall not be deemed a Lease amendment. If they do not agree, either party shall have the right to commence the appraisal process described in Section 1.3(d) above for the determination of the amount of Participation Rent for Non-Ticketed Events, with such Participation Rent to be set at a dollar amount designed to grant to City ten percent (10%) of Tenant's profit generated from such Non-Ticketed Events, but in no event less than \$3,500. Upon the completion of such process, the amount of Participation Rent for Non-Ticketed Events shall be as determined by the appraisal process.

Within ninety (90) days following the end of each Lease Year, Tenant shall deliver to City a statement, certified as true, correct and complete to the knowledge of the senior officer, member or partner of Tenant who is in the best position to know and has performed reasonable inquiry and diligence into such matters ("Tenant's Certification"), setting forth Tenant's calculation of Participation Rent for the preceding Lease Year (the "Participation Rent Statement"), together with appropriate backup documentation, as well as the actual payment of Participation Rent as set forth in the Participation Rent Statement. In the event this Lease terminates for any reason during a Lease Year, Tenant shall calculate Participation Rent for the portion of the Lease Year that occurred prior to such termination within sixty (60) days following the termination."

c. **New Definitions of Qualified Event and Qualified Ticket.** The definitions of "Qualified Event" and "Qualified Ticket" set forth in Section 34 of the Lease shall be deleted and the following definitions shall be substituted therefor:

Qualified Event means an event during the current Lease Year: (a) Where the actual attendance at the event is greater than two thousand (2,000) persons for a publicly ticketed event in the main auditorium (the "Main Arena") on the Premises, or (b) where the actual attendance at the event is greater than five hundred (500) persons for a Non-Ticketed Event at the Premises. Further, where the actual attendance at the event is greater than one thousand (1,000) persons for a publicly ticketed event in one of the halls on the Premises such event shall equal one-half (1/2) of a Qualified Event.

Qualified Ticket means a ticket sold for a publicly-ticketed event at the Premises where the actual turnstile attendance at the event is: (a) greater than two thousand (2,000) persons for a publicly ticketed event in the Main Arena on the Premises, or (b) greater than one thousand (1,000) persons for a publicly ticketed event in one of the halls on the Premises."

d. **Elimination of Rent Abatement Period.** Section 2.2(a) of the Lease provides for a Base Rent abatement period of up to twelve (12) months during Tenant's performance of the Initial Improvements. Effective as of the Amendment Effective Date such rent abatement provisions shall be deleted from the Lease. Accordingly, effective as of the Amendment Effective Date (i) the reference to the Rent Abatement Period shall be deleted from the Rent Commencement Date summary in the Term section of the Basic Lease Information table of the Lease, (ii) the phrase "subject to rent abatement during the Rent Abatement Period as set forth in Section 2.2" shall be deleted from Section 1.3(a) of the Lease, (iii) the definition for Rent Abatement Period shall be deleted from Section 34 of the Lease, and (iv) Section 2.2(a) of the Lease shall be deleted and the following provision shall be substituted therefor:

"(a) **Base Rent.** Tenant shall pay to City, as Base Rent, the annual sum of Three Hundred Thousand Dollars (\$300,000), subject to adjustment in accordance with Section 2.2(b) [Adjustment to Base Rent During the Initial Term] below. Tenant shall pay City Base Rent in advance, in equal monthly installments, on or before the first day of each and every calendar month during the Term (each, a "Rent Payment Date"). If the Lease ends on a day other than the last day of a calendar month, then Base Rent for such fractional month shall be computed by dividing the annual Base Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional month."

e. **Reconciliation.** The parties agree an accounting and reconciliation of the Base Rent, Participation Rent, Utilities and Services, and all other revenue and charges paid and due between the parties under the Lease is being conducted and, will be concluded thirty (30) days after the approval of this Amendment by the Board of Supervisors, which may result in a

"Reconciliation Adjustment". The Reconciliation Adjustment, if due to the City, will be paid by Tenant at the time of, and in addition to, the payment of Base Rent due the month following the approval of this Amendment by the Board of Supervisors; if due to Tenant, it will be deducted from Base Rent due to City starting the month following approval of this Amendment by the Board of Supervisors.

7. Polk Hall and Building Improvements.

a. Polk Hall Conversion and Other Building Improvements. Effective as of the Amendment Effective Date, (i) Exhibit B to the Lease shall be deleted, (ii) the definition of Initial Improvements in the Initial Improvement section of the Basic Lease Information table and in Section 34 of the Lease shall be deleted and the following shall be substituted therefor: "Building Improvements has the meaning set forth in Section 9.1", and (ii) Section 9 of the Lease shall be deleted in its entirety and the following provision shall be substituted therefor:

"SECTION 9 BUILDING IMPROVEMENTS INCLUDING POLK HALL CONVERSION

9.1 Tenant's Obligation to Construct the Building Improvements.

(a) Building Improvements. Tenant, at its sole cost and expense, and through one or more general contractors approved by City (collectively the "Contractor"), shall design, furnish and install within the Premises the following improvements (the "Building Improvements") in accordance with the process described in this Section 9.

(i) Polk Hall Conversion and Improvements. Tenant shall perform a minimum of \$4,000,000 of improvements to convert that portion of the Premises presently known as Polk Hall into an approximately 1,500 seat club/small concert hall (for the purposes of this Section (the "Polk Hall Club" and the "Polk Hall Club Improvements") and to renovate and upgrade the space, incorporating that portion of the building presently known as Room 202 into the Polk Hall Club, within three (3) years to five (5) years. The parties anticipate that when complete the Polk Hall Club will include a stage, multiple bar areas and a balcony, and that ingress and egress will be through a door on Grove Street. Among other matters, the required Polk Hall Club Improvements will include lighting improvements and HVAC separation from the balance of the Premises.

(ii) Electrical and Main Arena Improvements. Tenant shall perform a minimum of \$3,500,000 of improvements to the building's electrical system and to the main auditorium (the "Main Arena Improvements"), which minimum cost shall include only hard costs of construction (materials and labor), and shall not include the cost of labor and material for repairs and maintenance.

(iii) Elevator Improvements and Replacements. Tenant shall perform the following work on the building's elevators (collectively, the "Elevator Upgrades and Replacement"):

(1) A minimum of \$375,000 in improvements, modernization, and/or replacement for each of the two (2) freight elevators on both the Polk Street and Larkin Street sides of the Building (the "Freight Elevator Work");

(2) A minimum of \$1,000,000 to remove and replace the three (3) passenger elevators on the Polk Street side of the Building (the "Polk Street Passenger Elevator Replacement"); and

(3) A minimum of \$1,000,000 to remove and replace the three (3) remaining passenger elevators in the building (the "Final Elevator Replacement Work").

(iv) Minimum Building Improvement Cost. As used herein, the term "Minimum Building Improvement Cost" shall mean the following costs for each of the following categories (each, a "Category") of the Building Improvements:

\$4,000,000 for the Polk Hall Club Improvements;

\$3,500,000 for the Main Arena Improvements;

\$750,000 for the Freight Elevator Work;

\$1,000,000 for the Polk Street Passenger Elevator Replacement; and

\$1,000,000 for the Final Elevator Replacement Work.

The cost of Personal Property (as defined in Section 34 of this Lease) shall not be credited against any category of Minimum Building Improvement Cost, provided that the cost of elevator equipment shall be credited against the Minimum Initial Improvement Cost attributable to the Elevator Upgrades and Replacement.

(b) Timing of Building Improvements. Prior to the date that is one year after the Amendment Effective Date Tenant shall submit to the Director of Property a 10-year plan for the Final Elevator Replacement Work for City's approval, which shall not be unreasonably withheld, and Tenant shall complete the Final Elevator Replacement Work by the date(s) specified in such approved 10-year plan. The balance of the Elevator Upgrades and Replacement and the Main Arena Improvements shall be completed not later than the date the Polk Hall Club Improvements are completed, or within five (5) years from the Amendment Effective Date, whichever occurs first. If Tenant wishes to change the date(s) for the Final Elevator Replacement Work specified in the approved 10-year plan or the deadline specified in this Section 9.1(b) for completion of the balance of the Elevator Upgrades and Replacement and the Main Arena Improvements, such changes shall be effective only upon the written agreement of the parties.

(c) Design Documents. Prior to obtaining all necessary reviews, permits, and approvals from City in its regulatory capacity, Tenant shall submit to the Director of Property schematic design plans for the Polk Hall Club Improvements and Main Arena Improvements. The plans shall be subject to the approval of the Director of Property (the "Design Documents") which approval shall not be unreasonably withheld or delayed.

(d) Budget. To avoid future disputes about which costs can be credited against Tenant's minimum spending obligations for the various Categories of the Building Improvements, Tenant shall submit to the Director of Property a proposed budget at the time Tenant submits Design Documents and Construction Documents to the Director of Property. Prior to commencing construction of any Category of the Building Improvements Tenant shall provide City with a proposed budget for the relevant work, and shall obtain written confirmation from the Director of Property that (a) the work shown in the budget would qualify as work for which Tenant would be entitled credit against the Minimum Building Improvement Cost for the applicable Category of work, and (b) City approves the budget for the proposed work, including the amounts in each budget category (as approved, the "Budget").

(e) Construction Documents. Based on the approved Design Documents and any further adjustments approved by City, Tenant shall cause its architect or engineer approved by the Director of Property (the "Architect" or "Engineer", as applicable), which approval shall not be unreasonably withheld or

delayed, to prepare and submit to the Director of Property for City's approval, plans and specifications sufficient for the processing of an application for a building permit for each component of the Building Improvements in accordance with applicable laws (the "Construction Documents"). Such Construction Documents shall be subject to approval by City as set forth below.

(i) City's Approval of Plans. The Construction Documents (and any Change Orders thereto) shall be subject to approval by the Director of Property, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Construction Documents or proposed Change Order, the Director of Property shall promptly either approve or disapprove the submission; provided, if the Director of Property disapproves the submission, the reason for the disapproval and of the revisions that City reasonably requires in order to obtain approval consistent with the terms of this Lease shall be served upon Tenant in writing. As soon as reasonably possible thereafter Tenant shall submit to City documents incorporating the required revisions. Such revisions shall be subject to approval by the Director of Property under the same process outlined above; provided, the Director of Property shall not withhold approval of Construction Documents based on a matter that was previously approved by the Director as part of the approved Design Documents. Without limiting the generality of the foregoing, City agrees to approve or disapprove change order requests within five (5) business days after receipt from Tenant, and if not approved or disapproved within said period, Tenant may send a second notice to City which notice must state prominently "THIS IS A SECOND REQUEST. FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL BE DEEMED TO CONSTITUTE AN APPROVAL." If City still fails to respond in writing within five (5) business days after receipt of the second notice, such change order shall be deemed approved by City acting in its proprietary capacity under this Lease.

(ii) Payment for Plans. Tenant shall pay for all costs of preparing and completing the Design Documents and the Construction Documents.

(iii) Change Orders. If, following City's approval of the Construction Documents, Tenant requests or is required to make any Change Order, Tenant shall provide the Director of Property with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Change Order. Any such Change Order shall be subject to the Director of Property's prior written approval, in accordance with subparagraph (i) above. No approval by City of any such Change Order shall relieve or modify Tenant's obligations hereunder to complete the construction of the Building Improvements, nor shall any such approval limit any of City's rights or remedies hereunder or under the Lease. Tenant shall be solely responsible for the cost of the Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto.

9.2 Permits. Tenant shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Building Improvements, and upon request shall deliver copies of all of such permits and approvals to City. Tenant shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection and any other applicable inspections by other City departments or governmental agencies. Upon reasonable request by Tenant, City's Real Estate Division staff, acting in City's proprietary capacity but not in any regulatory capacity, will offer support, in accordance with industry custom for landlords, for approval of Tenant's permit applications.

9.3 Construction of Initial Improvements. Following City's approval of the Construction Documents, including obtaining all necessary permits and approvals, Tenant shall cause the Building Improvements to be constructed and installed in a good

and professional manner in accordance with sound building practice and in material conformity with the Construction Documents, as revised by any Change Orders, and the terms of this Lease. Other than as set forth herein, City shall not have any obligation with respect to any such work.

9.4 Construction.

(a) Diligent Prosecution. Prior to commencement of construction of any Category of the Building Improvements Tenant shall have obtained all required permits for construction of such Category in accordance with the approved Construction Documents. Tenant shall keep City apprised of the status of permit approval and the progress of construction. Upon commencement of construction of the Building Improvements, Tenant shall diligently pursue the Building Improvements to completion. Upon City's request, Tenant or its Contractor shall furnish the Director of Property with periodic reports on the construction. At all times during the construction of the Building Improvements, the Director of Property and City's Real Estate Division staff, shall have the right to enter the Premises to inspect the Premises, during regular business hours, provided such inspections do not unreasonably interfere with the construction and provided that City coordinates such access with Tenant at twenty-four (24) hours in advance of such access. Such access shall be subject to Tenant's reasonable security and safety measures.

(b) Inspection Notice. Tenant shall notify City when each Category of the Building Improvements is Substantially Completed, and City and Tenant shall schedule an inspection of the Premises in order for City to confirm Substantial Completion.

(c) Substantial Completion. A representative of City and a representative of Tenant shall walk through the Premises within thirty (30) days following the date a Category of the Initial Improvements is Substantially Completed to identify items which have not yet been completed. Within fifteen (15) business days following such walk through, City shall have the right to present to Tenant a written "punchlist" consisting of any items that have not been finished in accordance with the Construction Documents. Tenant shall promptly complete all defective or incomplete items identified in such punchlist within sixty (60) days after the delivery of such list, or such longer period as may be reasonably necessary to complete the same. City's failure to include any item on such list shall not alter Tenant's responsibility hereunder to complete all Initial Improvements in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

(d) Force Majeure. In the event of any Force Majeure, Tenant shall give prompt written notice to City of the occurrence of such event and the projected delay in performance, and thereafter shall keep City regularly informed of the status of such Force Majeure.

(e) Time of the Essence. Time is of the essence with respect to all provisions of this Section 9 [Building Improvements].

9.5 Minimum Building Improvements Cost and Potential Additional Improvements. Tenant shall pay for the cost of designing the Building Improvements, and shall pay the cost of constructing and installing the Building Improvements. In no event shall Tenant pay less than the Minimum Building Improvement Cost listed in Section 9.1(a)(iv) above for constructing and installing each Category of Building Improvements. Tenant shall have the right to alter line items in a Budget (not including Tenant's construction management costs) by spending more or less within each line item up to twenty percent (20%) without City's prior consent; provided, any alteration of a line item by twenty percent (20%) or more shall be subject to the prior review and approval of the City's Director of Property, which approval shall not be unreasonably

withheld. Within ninety (90) days following the completion of any Category of the Building Improvements, Tenant shall prepare a detailed accounting of all third party costs incurred by Tenant in completing such Category of the Building Improvements and Tenant's actual construction management costs, together with appropriate backup documentation as set forth below (the "Cost Statement"), and shall deliver the Cost Statement to City. Tenant's construction management costs shall not exceed reasonable and customary amounts in total and on an hourly basis. In the event that Tenant incurred third party and construction management costs to complete any Category of Building Improvements that are less than the Minimum Building Improvement Cost for such Category, Tenant shall suggest additional improvements to the Premises to make up the difference. The proposed additional improvements shall be subject to City Administrator's prior written approval, which approval shall not be unreasonably withheld or delayed. Upon agreement of the additional improvements (as approved, the "Additional Improvements"), Tenant shall promptly complete such Additional Improvements and upon completion, provide an updated Cost Statement to demonstrate that Tenant has spent the Minimum Building Improvement Cost for each Category and for the Additional Improvements. Tenant understands and agrees that Tenant's agreement to spend the Minimum Building Improvement Cost for each Category of work on the Premises is a material part of the consideration to City for this Lease, and City would not be willing to enter this Lease without such agreement. Tenant's failure to spend the Minimal Building Improvement Cost for any Category of Building Improvements as set forth herein (except as allowed with respect to approved Additional Improvements), or Tenant's submission of false statements regarding the Building Improvement cost, shall be a material default under this Lease.

9.6 **Required Documentation of Costs.** Tenant shall keep accurate books and records of all costs incurred in connection with the Building Improvements in accordance with accounting principles generally accepted in the construction industry. Tenant shall provide the Director of Property with copies of supporting data substantiating the Tenant's payment of costs for the Building Improvements. At City's request, Tenant shall also provide (i) all invoices received by Tenant from the Contractor or other third parties in connection with the construction of the Initial Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262 and executed by each subcontractor and material supplier, and (iii) such additional documentation as City may reasonably request. City shall have the right on written notice to Tenant to audit during regular business hours Tenant's books and records with respect to the Building Improvements.

9.7 **Ownership of Building Improvements.** Notwithstanding the provisions of Section 26.1 in the Lease, all affixed improvements and alterations that are part of the Building Improvements, including temporary and permanent fixtures, furniture and equipment, regardless of whether such item is considered a trade fixture, shall become the property of City upon the expiration or termination of this Lease, and shall be surrendered to City."

b. **Corresponding Changes to Definitions Section.** To reflect the foregoing changes to Section 9 of the Lease, effective as of the Amendment Effective Date, the definitions of the following terms shall be deleted from Section 34 of the Lease: Construction Interval, Construction Period, Phase, Phase 1, Phase 2, Phase 3, Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements, Phase 1 Construction Period, Phase 2 Construction Period, and Phase 3 Construction Period.

8. **Marquee.** If Tenant elects to replace the existing marquee on the building with a new marquee, the City, acting in its proprietary capacity through the City Administrator or City's Director of Property, shall not unreasonably withhold consent to the installation of such new marquee. Any such new marquee shall be subject to review by and approval of the San Francisco Planning Department and any other regulatory department or agency having jurisdiction, and must comply with all applicable laws, rules and regulations, including without limitation those of the San Francisco's Civic Center Historic District, and with this Section 8. The provisions of Section 10 of the Lease regarding Subsequent Construction and the provisions of Section 11 of the Lease shall apply to the installation of the new marquee, and the provisions of Section 3.2 of the Lease shall apply to the use of the new marquee. Tenant agrees that if any approved marquee at any time allows advertising or naming rights other than the City, Tenant, and event information, for which Tenant or its affiliates and Agents from a third party in connection with the advertising or naming rights receives revenue, income, or consideration, in cash or in the reasonable cash value to Tenant of any non-cash consideration ("Marquee Revenue"), then Tenant shall pay City fifty percent (50%) of the amount of the net Marquee Revenue, which for the purposes hereof shall mean the Marquee Revenue less commissions incurred by Tenant in the sale of such advertising or naming rights consistent with industry standards, provided such commission costs shall in no event exceed fifteen percent (15%). Such revenue sharing shall commence after Tenant recoups its planning, permitting, and construction costs for the marquee. Tenant shall keep accurate books and records of all such costs and at City's request shall provide the Director of Property with copies of invoices or other documentation of such costs.

9. **Repair and Maintenance.** Effective as of the Amendment Effective Date, Section 8.1 of the Lease [City's Duty to Maintain] shall be amended by adding the following to the first sentence following the phrase "and (ii)":

"in the event of any maintenance or repair costing less than Three Million Dollars (\$3,000,000) (subject to a CPI adjustment on the date of such repair is required) that is not subject to Section 13 [Damage or Destruction], City may request Tenant, and Tenant shall have the right but not the obligation to, make the repair for rent credit, the amount of which shall not exceed Tenant's actual third party out-of-pocket maintenance or repair cost (as substantiated by Tenant upon completion by satisfactory evidence), and shall be applied only against future Rent under this Lease, and in either case such work shall be considered to be Subsequent Construction for the purposes of Section 10 (subject however to City's obligation hereunder to provide rent credit or reimbursement), or, City may elect, at its sole discretion, to reimburse Tenant for some or all of the actual third party out-of-pocket maintenance or repair (as substantiated by Tenant upon completion by satisfactory evidence) in lieu of such Rent credit, and (iii)"

10. **Update of City Provisions.**

a. **Prevailing Wages and Local Hire for Certain Construction Work.** Effective as of the Amendment Effective Date Section 11.4 of Lease shall be deleted and the following provision shall be substituted therefor:

"11.4 Prevailing Wages and Working Conditions: Local Hire.

(a) Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction,

alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse/prevailingwages or call the City's Office of Labor Standard Enforcement at 415-554-6235.

(b) Local Hiring Requirements for Improvements and Alterations. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party."

b. Prevailing Wages for Theatrical Workers, and Trade Shows and Broadcast Services. To reflect changes in the numbering and content of the San Francisco Administrative Code provisions regarding the payment of prevailing wages for certain theatrical and trade show

workers, effective as of the Amendment Effective Date Section 30.3 of the Lease shall be deleted and the following provisions shall be substituted therefor:

“30.3 Wages and Working Conditions for Theatrical Workers, Special Events and Broadcast Services

Tenant shall pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions.”

c. Restrictions on the Use of Pesticides. To reflect the revision and reorganization of San Francisco ordinances regulating the use of pesticides on City property, effective as of the Amendment Effective Date (i) the reference to “Chapter 39 of the San Francisco Administrative Code” in the definition of Hazardous Material Laws in Section 34 of the Lease shall be changed to “Chapter 3 of the San Francisco Environment Code” and (ii) the provisions of Section 20.2(c)(i) of the Lease shall be deleted and the following provisions shall be added to the Lease as Section 32.11:

“32.11 Restriction on the Use of Pesticides.

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or

apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>."

d. Criminal History in Hiring and Employment Decisions. To reflect changes in the San Francisco Administrative Code requiring the inclusion of the provisions of Administrative Code Chapter 12T in any Property Contracts (other than Excluded Contracts) (as such terms are defined in such Chapter 12T) that are executed or amended on after the effective date of such ordinance, effective as of the Amendment Effective Date the following provisions shall be added to the Lease as Section 30.5:

"30.5 Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other

adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8."

e. Vending Machines: Nutritional Standards and Calorie Labeling Requirements.
To reflect changes in the San Francisco Administrative Code, effective as of the Amendment Effective Date the following provision shall be added to the Lease as Section 32.11:

"32.11 Vending Machines: Nutritional Standards and Calorie Labeling Requirements.

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards and Calorie Labeling Requirements"). Tenant agrees to incorporate the Nutritional Standards and Calorie Labeling Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards and Calorie Labeling Requirements or to otherwise comply with this Section 32.11 shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards

Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended."

f. **All-gender Toilet Facilities.** To reflect changes in the San Francisco Administrative Code, effective as of the Amendment Effective Date the following provision shall be added to the Lease as Section 32.12:

"32.12 **All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any building on City-owned land, including the Premises, where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance."

11. **Consent of Guarantor.** Concurrently with Tenant's execution of this Amendment, Guarantor shall execute and deliver to the City an acknowledgment of and consent to this Amendment, confirming that the Guaranty Agreement shall apply to Tenant's obligations under this Lease as amended by this Amendment.

12. **No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

13. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

15. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

16. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

17. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this

Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: BGCA MANAGEMENT, LLC,
a Delaware limited liability company

By: Another Planet Entertainment, LLC,
a Delaware limited liability company
Its:

By: 
AUTHORIZED SIGNATURE

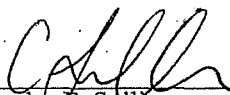
Name: Steve Welkom
Title: coo

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM FOR CITY:

DENNIS J. HERRERA, City Attorney

By: 
Charles E. Sullivan
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the City Administrator

“City”

and

BGCA MANAGEMENT, LLC,
a Delaware limited liability company

“Tenant”

Dated as of March 10, 2010

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- EXHIBIT B - Initial Improvements
- EXHIBIT C - City Days
- EXHIBIT D - Existing Employees
- EXHIBIT E - Form of Guaranty

LEASE

THIS LEASE ("Lease"), dated for reference purposes as of March 10, 2010, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the City Administrator ("Administrator"), and BGCA MANAGEMENT, LLC, a Delaware limited liability company ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

By a Request for Proposals ("RFP"), dated February 22, 2006, the Administrator requested proposals for the rehabilitation, use, and operation of the historic Bill Graham Civic Auditorium owned by City and located at 99 Grove Street in San Francisco, California.

As stated in the RFP, City established the following general goals relative to the rehabilitation and use of the Building: (i) rehabilitate the Building to create a vibrant and active venue for concerts and special events; (ii) rehabilitation, maintenance and operation should occur at no cost to City; (iii) optimize the public use and enjoyment of the Building, including retention of certain City uses during the course of each year; and (iv) create opportunities to hire local and economically disadvantaged persons during project activities. In releasing the RFP, City sought a tenant that could maximize revenues while providing an affordable, high-quality concert experience for educational, community and cultural events.

Proposals were received and evaluated, and the City Administrator selected Tenant as the party with whom City would enter into exclusive negotiations per the terms of the RFP. Tenant demonstrated that it has the ability to bring significant specialized knowledge, expertise and experience to the management and operation of the Building and to construct necessary improvements and promote a broad range of cultural, musical, and other events at the Building. Accordingly, the parties entered into an exclusive negotiations agreement ("ENA") dated as of December 6, 2006.

During the ENA term, Tenant investigated the Building and performed such due diligence regarding the Building and its suitability for the purposes contemplated by this Lease as determined necessary by Tenant. Tenant also refined its proposal for improvements to be made to the Building.

In a Certificate of Determination dated April 7, 2008, the City's Planning Department determined that this Lease is categorically exempt from environmental review under CEQA State Guidelines Section 15301(a), or Class 1.

City and Tenant now desire to enter into this Lease, upon all of the terms and conditions hereof.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Tenant agree as follows:

BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such

item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: 3/10, 2010

City: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the City Administrator

Tenant: BGCA MANAGEMENT, LLC,
a Delaware limited liability company

Premises (Section 1.2): The building known as "The Bill Graham Civic Auditorium" located on property bordered by Grove, Hayes, Polk and Larkin Streets in San Francisco, California (Block 0812, Lot 001), as more particularly shown in *Exhibit A*, not including Brooks Hall, and subject to Section 1.2 with respect to Room 202.

Term (Section 1.3): Commencement Date: Effective Date of Lease
Rent Commencement Date: Ninety-one (91) days after the Commencement Date, subject to abatement during the Rent Abatement Period as described in Section 2.2.

Expiration Date: December 31, 2030

Tenant shall have two (2) options to extend the Term, each for an additional five (5) year period, as set forth in Section 1.3.

Construction Period (Section 9.4): Construction of the Initial Improvements shall occur in three (3) separate phases referred to as "Phase 1", "Phase 2" and "Phase 3" (each a "Phase"). Each Phase will begin upon Tenant's Notification to City that tenant is ready to start construction of that Phase, provided that Phase 1 must begin on or before the date that is 16 months after the Commencement Date, Phase 2 must begin on or before the date that is 24 months after the Commencement Date, and Phase 3 must begin on or before the date that is 36 months after the Commencement Date. The start of the Construction Period for each Phase shall be referred to the "Phase 1 Commencement Date", the "Phase 2 Commencement Date", and the "Phase 3 Commencement Date", as applicable. The improvements to be constructed during each of Phase 1, Phase 2 and Phase 3 shall sometimes be referred to as the "Phase 1 Improvements", "Phase 2 Improvements" and "Phase 3 Improvements", respectively.

The Phase 1 construction will begin on the Phase 1 Commencement Date and continue through the Substantial Completion of the Phase 1 Improvements (the "Phase 1

Construction Period”).

The Phase 2 construction will begin on the Phase 2 Commencement Date and continue through the Substantial Completion of the Phase 2 Improvements (the “Phase 2 Construction Period”).

The Phase 3 construction will begin on the Phase 3 Commencement Date and continue through the Substantial Completion of the Phase 3 Improvements (the “Phase 3 Construction Period”).

Any reference in this Lease to the “Construction Period” shall include the Phase 1 Construction Period, the Phase 2 Construction Period, or the Phase 3 Construction Period, as applicable. The Construction Period shall not include intervals between Substantial Completion of one Phase and the commencement of construction with respect to the subsequent Phase provided that during such period all necessary approvals of the City and other governmental agencies have been obtained to allow for use of the Premises by Tenant (each a “Construction Interval”).

Base Rent (Section 2.2):

Construction Period Rent: \$0 for up to a cumulative maximum of twelve (12) months

Initial Annual Base Rent: \$100,000

Initial Base Year monthly payments: \$8,333.33

With potential credits against Base Rent for utilities as set forth in Section 12.1

Rent Adjustment Dates (Section 2.2):

Annual Increase in Base Rent: 2.5% increase each Lease Year commencing at the start of Lease Year 2 (subject to proration pursuant to Section 2.2(b)) and each anniversary thereafter.

Participation Rent (Section 2.3):

As set forth in Section 2.3

With potential credits against Participation Rent for the Initial Improvements as set forth in Section 9.7 and for utilities as set forth in Section 12.1

Parking Revenue (Section 2.4):

As set forth in Section 2.4

Use (Section 3): For the purpose of presenting music concerts, theatrical events, cultural and entertainment performances, consumer events, trade shows, spectator sports, area and corporate meetings, social functions and special events, as more particularly described in Section 3. Tenant may also add a restaurant or cafe, subject to the parties agreement on the terms relating to such use including but not limited to any increased rent, as more particularly described in Section 3).

Initial Improvements (Section 9.1): As generally and described in *Exhibit B*, subject to further modification as agreed to by the City Administrator.

Utilities and Services (Section 12.1): Tenant shall pay for all utilities and services in connection with Tenant's use and operation of the Building.

Security Deposit (Section 16): Fifty Thousand Dollars (\$50,000)

Notice Address of City (Section 28.1): City and County of San Francisco
City Administrator
City Hall, Rm. 362
1 Dr. Carlton B. Goodlett Dr.
San Francisco, California 94102-4682
Attn: City Administrator
Fax No.: (415) 554-4849

and to: Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Fax No.: (415) 552-9216

and to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: RE/Finance
Deputy City Attorney
Fax No.: (415) 554-4755

Key Contact for City: Director of Property

Telephone No.: (415) 554-9875

Alternate Contact for City: Assistant Director of Property

Telephone No.: (415) 554-9860

Address for Tenant (Section 28.1): c/o Another Planet Entertainment, LLC
1815 Fourth Street, Suite C
Berkeley, California 94710
Attn: Gregg W. Perloff, CEO

Key Contact for Tenant: Gregg W. Perloff

Telephone No.: (415) 864-0815

Alternate Contact for Tenant: Steve Welkom

Telephone No.: (415) 864-0815

Section 1 **PREMISES; TERM**

1.1 Definitions.

All initially capitalized terms used herein are either defined in Section 34 [Definition of Certain Terms], or have the meanings given to them when first defined.

1.2 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, City hereby leases to Tenant, and Tenant hereby leases from City, the Premises. All improvements now and hereafter located on the Premises shall be included as part of the Premises. The tangible personal property listed on *Exhibit A* shall be included as a portion of the Premises and available to Tenant in connection with use of the Premises. City reserves and shall have the exclusive right to use Room 202 for general office purposes, subject to the reasonable rules and regulations adopted by Tenant. City shall also have the right to access the Premises from time to time for City's use of Brooks Hall upon not less than one business day's prior written notice, provided City shall do so in a manner that minimizes disruption to Tenant's use of the Premises. The City's right to use Room 202 and access to Brooks Hall through the Premises shall be subject to Tenant's reasonable safety and security measures and shall be personal to the City and its Agents and may not be assigned or otherwise transferred.

(b) City Days.

(i) Notwithstanding anything to the contrary in this Lease, City shall have the right to use the Premises for civic events and other City purposes up to fifty (50) days per Lease Year, for events approved by the City Administrator (or his or her designee) in accordance with the procedures described on *Exhibit C* (the "City Days"), or such other days or events as may be agreed upon by Tenant (in its sole discretion) and City; provided, however, City shall not (i) use or occupy the Premises for more than four (4) weekend days or nights (i.e., Friday or Saturday) per Lease Year unless approved by Tenant, in its sole discretion or (ii) sell tickets or charge admission to any event, family show or other entertainment event held at the Premises unless approved by Tenant in its sole discretion and the proceeds from the sale of any such tickets or admission charges shall be employed solely to offset costs of the event except that City or a nonprofit or government organization, subject to Tenant's prior written approval in Tenant's sole discretion, may sell tickets or charge admissions to certain fundraisers or events

benefiting such organizations. Notwithstanding the immediately preceding sentence, with respect to fund raising events for the SF Symphony, the SF Opera, the SF Ballet, and the SF Museums, the consent of Tenant with respect to the sale of tickets by the City shall not be unreasonably withheld, conditioned or delayed. City Days shall include any days needed for setting up or tearing down in addition to the day of each event, as requested by City and booked on the Master Calendar as described in subparagraph (ii) below. All tickets for all such events shall be sold solely through the box office located at the Premises or through the ticket service employed with respect to the Premises. With respect to partial Lease Years, the maximum number of City Days and the limit on the number of weekend days or nights shall be prorated based on the portion of the Lease Year for which the Term is in effect. With regard to City's use of the Premises on City Days, there shall be no Rent abatement and City shall not be required to pay Tenant for the use of the Premises; however, City shall pay or cause to be paid to Tenant or directly to the provider, as applicable, the actual costs or fees without markup to Tenant for all costs and expenses relating to use of the Premises on the City Day, including, without limitation, the cost of all ushers, cleaning, security, ticket takers, and catering employees and stagehands, if and to the extent used by City or otherwise required under any labor agreement relating to the Premises, all utilities, and all services and property or equipment rentals, if any, requested by City, and any additional costs or services requested by City at prices or fees agreed upon by the parties in advance. Tenant shall notify City in advance of costs of a type not previously charged to City for prior events and not otherwise enumerated herein. Fifty percent (50%) of the aggregate costs and expenses relating to the use of the Premises on each City Day as reasonably estimated by City and Tenant shall be paid to Tenant upon execution of the City Day Contract (as defined below) and the balance shall be paid to Tenant at least five (5) business days prior to the occurrence of the event. In the event that the actual total costs for any such event is greater than or less than the estimated amount following the determination by Tenant of the total costs and expenses for an event, Tenant shall notify City of the amount of such actual costs and any excess payment made to Tenant for costs, shall be promptly paid to City or as City directs and any underpayment shall be promptly paid to Tenant.

(ii) Tenant agrees to maintain a master calendar for all events booked at the Premises, including the estimated size of the event, the area of the Premises to be used, and whether the event is a Non-Ticketed Event but excluding the identity of the artists or performers (the "Master Calendar"), and shall make the Master Calendar available to City upon request. Tenant shall also provide to City access to or a copy of the Master Calendar, or an update of items added to the Master Calendar, in a format agreed to by the parties, on a monthly basis. The parties agree to meet and confer at appropriate times in order to coordinate Tenant's and City's bookings and events. Each party may book events on dates that have not been previously reserved on the Master Calendar, subject to the limitations in this Section 1.2(b). With respect to each event to occur on a City Day a contract ("**City Day Contract**") shall be entered into by City, or other applicable entity or organization, and Tenant in a form reasonably acceptable to all parties. City or Tenant may request alterations to the Master Calendar in order to accommodate specific bookings, acts or events, and the parties agree to cooperate and act in good faith to revise event dates if and to the extent possible without loss or cost to either party; provided, in no event shall either party be required to change an event date once it has been confirmed on the Master Calendar. Without limiting the foregoing, once City has booked a City Day, Tenant agrees to not book events on City Days without City's prior written approval, and once Tenant has booked an event, the dates booked by Tenant on the Master Calendar shall not be available to

City for City Days. If either party decides that it will not use the Premises on a particular day being held for it in the Master Calendar, it will promptly notify the other party of such fact in writing and revise the Master Calendar accordingly, and either party shall thereafter be free to book events on such day. City shall make good faith efforts to keep Tenant informed of City's proposed uses on City Days and any cancellations of events to be held on City Days. City further agrees to use commercially reasonable efforts to move events on City Days to other facilities, whether or not City facilities, if such facilities are appropriate and available, do not result in increased costs to City, and Tenant requests the right to book another event at the Premises on such City Day. Tenant, at its election, shall be entitled to reimburse the City for any increased cost attributable to moving events to alternative facilities.

(c) Permitted Title Exceptions. The interests granted by City to Tenant hereunder are subject to any and all existing title exceptions of record, together with any exceptions that Tenant either knew of or reasonably should have known as a result of its due diligence prior to entering into this Lease. City, however, shall deliver possession of the Premises to Tenant free of any tenancies or occupants except as specifically set forth in Section 1.2(a).

(d) Land and Subsurface Rights. Nothing in this Lease gives Tenant any right to any of the land under or surrounding the Building, including but not limited to any mineral, oil, gas, water, or other rights relative to the land.

(e) "AS-IS WITH ALL FAULTS". TENANT AGREES THAT THE PREMISES HAVE BEEN DELIVERED BY CITY AND ACCEPTED BY TENANT IN ITS "AS IS WITH ALL FAULTS" CONDITION. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS OFFICERS OR AGENTS HAS MADE, AND THERE IS HEREBY DISCLAIMED TO THE FULLEST EXTENT, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR APPURTENANCES TO THE PREMISES FOR THE DEVELOPMENT, USE OR OPERATION OF THE PREMISES AS CONTEMPLATED BY THIS LEASE, ANY COMPLIANCE WITH LAWS OR LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PREMISES.

(f) Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition set forth above, effective upon the Commencement Date, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, City and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises as of the Commencement Date, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises, and (ii) the Premises' compliance as of the Commencement Date with any Laws applicable to the Premises, including without limitation, Hazardous Materials Laws. In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this Section includes unknown claims for Losses pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease. Notwithstanding the foregoing, City shall not be released under this Section 1.2(f) with respect to its performance of its obligations specifically set forth in the Lease.

Initials: _____

1.3 Term; Extension Options.

(a) Term of Lease. The Term of this Lease shall commence on the Effective Date (the "**Commencement Date**"). The Rent Commencement Date shall be the date that is 91 days after the Commencement Date, subject to rent abatement during the Rent Abatement Period as set forth in Section 2.2. The Lease shall expire on the Expiration Date as defined in the Basic Lease Information, unless sooner terminated in accordance with the terms of this Lease or unless extended by an Extension Option. City shall deliver the Premises to Tenant on the Commencement Date in their then existing as is condition as provided above, with no obligation of City to make any improvements, repairs or alterations in connection with such delivery.

(b) Extension Options. City grants to Tenant two (2) options to extend the Term of this Lease (the "**Extension Options**"), each for an additional five (5) years (an "**Extended Term**") upon the following terms and conditions. Tenant may exercise an Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof (the "**Exercise Notice**") not less than one hundred eighty (180) days prior to the then-applicable Expiration Date. If any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's delivery of an Exercise Notice or at any time prior to the first day of an Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such an Event of Default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void unless Tenant subsequently cures the Event of Default within the time period permitted under this Lease for cure of the breach at issue. If Tenant fails to exercise an Extension Option or fails to satisfy the conditions precedent to the exercise of the Extension Option as set forth below, then there will be no Extended Term. Furthermore, if Tenant fails to exercise the first Extension Option, then the second Extension Option shall be null and void.

(c) Conditions Precedent to Exercise of Option. In addition to the lack of any defaults as set forth above, the following conditions precedent must be satisfied, unless waived by the City Administrator in writing, in order for the exercise of an Extension Option to become effective:

(i) With respect to the first Extension Option, Tenant shall have booked an average of not less than forty (40) Qualified Events per Lease Year during the period beginning Lease Year 10 and continuing through and including Lease Year 19;

(ii) (With respect to the second Extension Option, Tenant shall have booked an average of not less than forty-five (45) Qualified Events per Lease Year during the period beginning Lease Year 20 and continuing through and including Lease Year 24; and

(iii) With respect to both Extension Options, City shall have determined, in its reasonable discretion, that no capital repairs (for which City would be responsible under the Lease to pay) costing in excess of Three Million Six Hundred Thousand Dollars (\$3,600,000) are required or likely to be required to the Building during the Extended Term, or, alternatively, the parties have agreed upon a cost sharing allocation for any such repairs (which cost sharing agreement, if any, shall be reflected in an amendment to this Lease). If the parties are negotiating for such a lease amendment, the Lease shall continue during the period of such negotiations; provided, either party may terminate the negotiations in which case this Lease shall expire on the then Expiration Date.

(d) Determination of Rent For the Extended Term. Upon City's acceptance of Tenant's Exercise Notice, the parties agree to meet and confer in good faith for a period of thirty (30) days, and such additional time as may be mutually agreed upon by the parties (the "Negotiation Period") to seek agreement on the fair market value Base Rent and Participation Rent for the applicable Extension Term and any cost sharing arrangement with respect to capital repairs pursuant to Section 1.3 (c)(iii) above, if applicable. Tenant agrees to produce nonconfidential information regarding its costs and revenues relative to the Premises during the Initial Term, certified by Tenant as true and correct and not misleading in any material respect, in connection with such negotiations. If the parties reach agreement, then the Extension Term shall be on all of the terms, covenants and conditions of this Lease, except that Base Rent and Participation Rent shall be adjusted as set forth in the parties' agreement. The parties acknowledge that any utility cost sharing, as set forth in Section 12.1 below shall be taken into account in determining fair market value, and the cost-sharing amount may be adjusted or eliminated as part of the Base Rent and Participation Rent adjustment. If the parties are unable to reach agreement on the Base Rent and Participation Rent during the Negotiation Period (but do reach agreement on cost sharing, if any, regarding capital repairs pursuant to Section 1.3 (c)(iii) above, if applicable), then the Base Rent and Participation Rent shall be the prevailing market rate (the "Market Rate") for comparable venues in the San Francisco Bay Area, taking into consideration industry standards in California, determined by arbitration as follows:

(A) City and Tenant shall each appoint one appraiser; upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations; without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate in the City and County of San Francisco.

(B) Each appraiser will make an independent determination of the Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Market Rate. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Market Rate to the parties within thirty (30) days after the appointment of the last of such appraisers. If the higher appraised Market Rate is not more than one hundred ten percent (110%) of the lower appraised Market Rate, then the Market Rate shall be the average of such two Market Rate figures.

(C) If the higher appraised Market Rate is more than one hundred ten percent (110%) of the lower appraised Market Rate, then the first two appraisers shall agree upon and appoint an independent third appraiser within fifteen (15) days after both of the first two (2) appraisals have been submitted to the parties. The third appraiser shall have the minimum qualifications set forth above. If for any reason the two appraisers do not appoint such third appraiser within such fifteen (15)-day period, then either party may apply to the American Arbitration Association (AAA) in San Francisco, or if AAA does not then exist to any similar provider of professional commercial arbitration services, for appointment for an independent third appraiser meeting the foregoing qualifications.

(D) Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other party and the appraiser such party selected, at the same time it submits the same to the third appraiser. Neither party, and neither of the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Market Rate determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Market Rate. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Market Rate. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(E) Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Market Rate by the accepted appraisal shall be conclusive, final and binding on the parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the

provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers (but not the third appraiser) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

(F) Each party shall bear the fees, costs and expenses of the appraiser it selects under Section 1.3(d)(A) and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser shall be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(G) If, either by agreement of the parties or by the arbitration procedure provided herein, the Market Rate is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Market Rate determined by City until such time as the Market Rate is finally determined by agreement of the parties or by the appraisal procedure set forth above, at which time City shall refund any excess amount to Tenant or Tenant shall pay any shortage to City, as the case may be. No such delay in the determination of Market Rate shall be deemed to constitute a waiver by either party of the adjustment of Market Rate as provided in this Section.

(e) Tenant Right to Reject Extension Option. Notwithstanding anything to the contrary set forth above, if the Market Rate is determined by arbitration and if Tenant does not, in its sole discretion, approve the Market Rate established by such arbitration, Tenant may rescind its exercise of the Extension Option by giving City written notice of such election to rescind within fifteen (15) days after receipt of the determination. If Tenant rescinds its exercise of the Extension Option, then (i) the Lease shall terminate on the later of (A) the date that is ninety (90) days following Tenant's rescission notice and (B) the date the Lease would have otherwise terminated absent Tenant's exercise of the Extension Option, (ii) Tenant shall pay all costs and expenses of all of the appraisals, and (iii) Tenant shall indemnify City against all Claims relating to any events booked by Tenant for the Premises, if any, from and after the Lease expiration.

(f) City Early Termination Right. City shall have the right to terminate this Lease effective on the last day of Lease Year 10, if Tenant fails to hold at the Premises an average of forty (40) or more Qualified Events per Lease Year during the period from the start of Lease Year 6 to the end of Lease Year 9 (the "Performance Period"). Within thirty (30) days following the end of each Lease Year during the Performance Period, Tenant shall certify to City the number of Qualified Events held during the preceding Lease Year (or if not previously certified, then for any other previous Lease Year during the Term). Within thirty (30) days following the end of the Performance Period, Tenant shall certify to City the number of Qualified Events held at the Premises during the Performance Period and shall provide to City, upon request, reasonable backup evidence in support of such certification. City shall exercise such termination right, if at all, by written notice to Tenant delivered within sixty (60) days following

City's receipt of Tenant's certification of the number of Qualified Events held during the Performance Period together with the requested backup information. Upon any such termination, this Lease shall terminate without cost or liability to City on the last day of Lease Year 10, and Tenant shall vacate and surrender the Premises in the condition required under this Lease.

(g) Tenant Early Termination Right/Competing Venue. Tenant shall have the right to terminate this Lease if City operates, loans funds to, or otherwise provides material economic incentives such as tax rebates or waivers (which incentives are not generally provided to all similarly situated operators) to, a Competing Venue or if City, acting in its proprietary capacity as a landlord, leases property owned by City to a private entity for the purpose of constructing a Competing Venue (the foregoing shall collectively be referred to as "City Finances") as set forth in this subsection. For purposes of this Lease, a "Competing Venue" shall mean an arena or concert hall seating between 3,000 and 12,000 spectators, that is built for the purpose of holding music concerts and similar live events (including arenas built and used primarily for the exhibition of sports or sporting events but that are also used for concerts and music events). If City Finances a Competing Venue, then Tenant shall have the right terminate this Lease at any time commencing on the date that is six (6) months following the date of the first event held at the Competing Venue and continuing thereafter for a period of two (2) years by delivering to City a written notice of termination, provided, (i) Tenant must provide to City evidence that its ticket sales, gross revenues or net profits at the Premises have decreased by more than ten percent (10%) during the six (6) month period preceding Tenant's delivery of the termination notice, as compared to the same six (6) month period for the previous calendar year, despite Tenant's similar marketing and promotional efforts during the comparison periods, and (ii) unless the City Administrator agrees to an earlier termination date, then the termination shall occur no sooner than the date that is six (6) months following Tenant's delivery of the termination notice. Upon Tenant's valid exercise of this termination right, this Lease shall terminate without cost or liability to Tenant or City on the date that is six (6) months following Tenant's delivery of the termination notice, or such earlier or later date as may be agreed upon by the parties, and Tenant shall vacate and surrender the Premises in the condition required under this Lease.

(h) Tenant Year 10 Termination Right. Tenant shall have the right to terminate this Lease effective on the last day of Lease Year 10 if Tenant cannot profitably operate its business at the Premises despite its good faith efforts to do so. Tenant may effectuate such termination by providing City with written notice of termination at least one hundred eighty (180) days prior to the end of Lease Year 10, together with a certified statement of its operating losses at the Premises during the Lease term. Upon Tenant's valid exercise of this termination right, this Lease shall terminate without cost or liability to Tenant or City at the end of Lease Year 10, or such earlier or later date as may be agreed upon by the parties, and Tenant shall vacate and surrender the Premises in the condition required under this Lease; provided, however, City shall have no responsibility for any events booked by Tenant and Tenant shall Indemnify City for and against any and all Claims relating to events booked or alleged to have been booked by Tenant or its Agents from and after the termination date.

Section 2 **RENT**

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to City at the times and in the manner provided in this Section 2 [Rent]. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

2.2 Base Rent.

(a) Base Rent. There shall be no Base Rent during the first 90 days after the Commencement Date. Starting on the 91st day after the Commencement Date (the "**Rent Commencement Date**") and for the remainder of the Term, Tenant shall pay to City, as Base Rent, the annual sum of One Hundred Thousand Dollars (\$100,000), subject to abatement during the Rent Abatement Period as set forth below and to adjustment in accordance with the Section 2.2(b) [Adjustment to Base Rent During the Initial Term] below. For the Construction Period, there shall be no Base Rent due or owing by Tenant for so long as Tenant continues to work on and complete the Initial Improvements as required by this Lease (the "**Rent Abatement Period**"), provided that in no event shall the Rent Abatement Period exceed a cumulative total of twelve (12) months. In computing the twelve (12) month period the Construction Intervals, if any, shall be excluded and Tenant shall be obligated to pay Base Rent during any Construction Interval. Upon exhaustion of the 12 month Rent Abatement Period, Tenant shall pay Base Rent during the remainder of the Construction Period. In the event that this Lease is terminated at any time due to Tenant's failure to complete the Initial Improvements as required hereunder which failure is not due to a default under this Lease by City, then without limiting any of City's remedies hereunder or other amounts payable by Tenant hereunder, Tenant shall pay to City Base Rent in the amount of Ten Thousand Dollars (\$10,000.00) per month for each month of the Rent Abatement Period prior to termination for which no Base Rent was paid by Tenant. Tenant shall pay City Base Rent in advance, in equal monthly installments, beginning on the Rent Commencement Date and thereafter on or before the first day of each and every calendar month during the Term (each, a "**Rent Payment Date**") except during the Rent Abatement Period as provided above. If the Rent Commencement Date begins on a day other than the first day of a calendar month, or if the Lease ends on a day other than the last day of a calendar month, then Base Rent for such fractional month shall be computed by dividing the annual Base Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional month. An equivalent proration of Base Rent shall be made with respect to each month during which the Rent Abatement Period commences and ends. The reduced Rent during the Rent Abatement Period is to assist Tenant in connection with construction of the Initial Improvements during this period. Tenant assumes the risk that it will not complete the Initial Improvements, or any Phase thereof, during the Rent Abatement Period. The Base Rent shall be payable during any Construction Interval and the abatement of the obligation to pay Base Rent shall cease at the end of the Rent Abatement Period, as set forth above regardless of when each Phase of the Initial Improvements are actually completed.

(b) Adjustment to Base Rent During the Initial Term. On each Adjustment Date, the Base Rent shall be increased for the ensuing year by two and one-half percent (2½ %) of the then Base Rent, as previously adjusted; provided, however, the increase occurring on the

first day of Lease Year 2 shall be the product of (i) two and one-half percent (2½%) and (ii) the amount of days contained in Lease Year 1 divided by 365.

2.3 Participation Rent.

Tenant agrees to pay to City, as Participation Rent: (i) fifty percent (50%) of the Net Naming Rights Revenue in excess of Five Hundred Thousand Dollars (\$500,000) per Lease Year (subject to a CPI adjustment on each Adjustment Date); and (ii) Five Dollars (\$5) (the "**Ticket Payment**") for each Qualified Ticket sold in excess of Three Hundred Thirty-Seven Thousand (337,000) Qualified Tickets per Lease Year; provided, on each Adjustment Date, the Ticket Payment shall be increased in accordance with CPI; and (iii) \$2,500 for each corporate event and other non-ticketed event (each such corporate or other non-ticketed event, a "**Non-Ticketed Event**") held in the main halls of the Premises (i.e., the main auditorium or the Polk and Larkin Rooms) for which Tenant receives revenue, provided that on each Adjustment Date such sum shall be increased in accordance with CPI. The City's Director of Property and Tenant shall meet and confer in good faith following the end of the ninth Lease Year in order to determine the appropriate amount of Participation Rent for Non-Ticketed Events starting in the tenth Lease Year and for the remainder of the Initial Term, taking into account the average revenue generated and average expenses incurred in connection with Non-Ticketed Events and the desire to encourage the profitable continuation of Non-Ticketed Events. Any agreement between Tenant and City's Director of Property to adjust the Participation Rent for Non-Ticketed Events shall be memorialized in writing, which shall be incorporated into this Lease and shall not be deemed a Lease amendment. If they do not agree, either party shall have the right to commence the appraisal process described in Section 1.3(d) above for the determination of the amount of Participation Rent for Non-Ticketed Events, with such Participation Rent to be set at a dollar amount designed to grant to City ten percent (10%) of Tenant's profit generated from such Non-Ticketed Events, but in no event less than \$2,500. Upon the completion of such process, the amount of Participation Rent for Non-Ticketed Events shall be as determined by the appraisal process.

Within ninety (90) days following the end of each Lease Year, Tenant shall deliver to City a statement, certified as true, correct and complete to the knowledge of the senior officer, member or partner of Tenant who is in the best position to know and has performed reasonable inquiry and diligence into such matters ("**Tenant's Certification**"), setting forth Tenant's calculation of Participation Rent for the preceding Lease Year (the "**Participation Rent Statement**"), together with appropriate backup documentation, as well as the actual payment of Participation Rent as set forth in the Participation Rent Statement. In the event this Lease terminates for any reason during a Lease Year, Tenant shall calculate Participation Rent for the portion of the Lease Year that occurred prior to such termination within sixty (60) days following the termination; provided, the threshold amount of Qualified Tickets on which Participation Rent is based shall be reduced pro rata (based upon a 365-day Lease Year) for the percentage of the Lease Year which has transpired as of the termination date. For example, if the Lease is terminated one hundred twenty (120) days into the Lease Year, the Percentage Rent shall be based on the number of Qualified Tickets sold in that Lease Year in excess of 111,037.50 (or, 32.9% of 337,000).

2.4 Parking Revenue.

(a) As provided in the City's Charter, the City's Municipal Transportation Agency ("MTA") manages and sets parking rates at City-owned garages, including the Civic Center Garage. The City's Charter also provides that the Recreation and Park Department ("RecPark") receives all net revenues from the Civic Center Garage. The parties understand and agree that Tenant's use of the Premises may result in additional revenue to City from increased use of the Civic Center Garage, and City has agreed to allow Tenant to receive a portion of any such revenue during the Term (excluding the Extended Terms, if any) as set forth in this Section 2.4.

(b) City, acting through the MTA or its successor, shall set parking rates for the Civic Center Garage, including a flat rate for parking in the Civic Center Garage, effective during evening and weekend hours specified by the MTA (the "Event Rate"). Tenant may request increases to the Event Rate for specific dates, and City staff agrees to cooperate in good faith with Tenant on processing any such requested increase; provided, however, nothing herein shall limit the MTA's sole discretion in determining the Event Rate at the Civic Center Garage. The Event Rate shall include applicable parking taxes charged by the City. The standard Event Rate as of the Effective Date is Twelve Dollars (\$12), but the MTA may set different rates based on the day of the week, the number of events being held near the Civic Center Garage, and probable garage demand, all in keeping with the MTA's standard practice. The MTA shall inform Tenant of any change in the Event Rate for a particular date as soon as reasonably practical, but in no event later than ninety (90) days before an event date. The MTA shall have the right to increase or decrease the Event Rate at any time; provided, however, the Event Rate for purposes of the revenue sharing provisions of this Section 2.4 with respect to Parking Vouchers and VIP Passes (as defined below) shall be the Event Rate as set by the MTA as of the date that is ninety (90) days before an Event Date, and the Event Rate for purposes of the revenue sharing provisions of this Section 2.4 with respect to parking validation shall be the actual Event Rate on the date of the event.

(c) During the Term (but excluding the Extended Terms, if any), Tenant shall have the right to sell parking vouchers for parking in the Civic Center Garage (the "Parking Vouchers") and VIP Passes (the "VIP Passes") to patrons attending evening events at the Premises at a price determined by Tenant, provided that Tenant shall not charge more than the Event Rate for Parking Vouchers or VIP Passes that are sold individually and not as part of a package. The Parking Vouchers shall be for general parking in the Civic Center Garage on the specified night, whereas the VIP Passes shall be for parking in a reserved section of the Civic Center Garage on the specified night, as determined by City, but close to the entrance to the Premises. Tenant shall also have the right to validate parking tickets for concert ticket holders attending a concert at the Premises during the concert event. Tenant shall have the ability to purchase, at Tenant's sole cost, one or more electronic parking validation machines for use within the Premises. Tenant can validate parking tickets for free or for a nominal charge, and City shall accept the validated tickets for a discount to the Event Rate charged at the Civic Center Garage as agreed to by Tenant and MTA on the specified evening; provided the discount, if any, will be deducted in full from the Tenant's share of parking revenues hereunder pursuant to Section 2.4(f) below.

(d) Tenant shall collect all applicable parking taxes on each Parking Voucher or VIP Pass sold by Tenant at the time that it sells the Parking Voucher or VIP Pass, and the

garage operator shall collect all applicable parking taxes on each validated parking ticket (which shall be based on the Event Rate, not the discounted rate) at the time it collects the validated parking ticket. The parking taxes shall be paid by the entity collecting the tax (i.e., either Tenant or the parking operator). The Parking Voucher or VIP Pass shall be in a form approved by the MTA and the third-party garage operator (if any) in advance, shall include the event and the date, and shall be collected by the garage operator upon the patron's entry into or departure from the Civic Center Garage together with the ticket form issued to the garage user on entry. The parking validation shall be performed in accordance with a process approved by the MTA and the third party garage operator (if any). The garage operator shall collect all validated parking tickets upon a patron's departure from the Civic Center Garage, together with cash in the amount of the Event Rate minus the agreed-upon discount for the validation. City shall provide to Tenant, upon request and at Tenant's sole cost, an opportunity to review an automated parking report that shows the number of the Parking Vouchers, VIP Passes and validated parking tickets collected by the City's garage operator for the preceding calendar month. If a concert attendee does not depart from the Civic Center garage that night but leaves his or her vehicle over one or more nights, the Parking Voucher, VIP Pass or parking validation will be invalidated and the event attendee will be required to pay the then-existing rates upon departure consistent with other users of the Civic Center Garage.

(e) Tenant shall, as soon as possible following the scheduling of an evening event, notify the person(s) designated by the MTA (the "**Parking Official**"), of Tenant's estimate of the number of Parking Vouchers and VIP Passes that it expects to sell for each event date, as well as the estimated number of concert attendees and parkers. Depending on the existence and number of other known events in the Civic Center area on a date, City shall have the right to limit the number of Parking Vouchers and VIP Passes to be sold by Tenant on that date by providing Tenant with written notice of City's exercise of such right; provided (i) in no event shall Tenant be limited to less than two hundred (200) Parking Vouchers and VIP Passes, collectively, per event, and (ii) on the date of City's exercise of such right, City's limit cannot be lower than the Parking Vouchers and VIP Passes sold by Tenant as of such date. At least forty-eight (48) hours before each event date in which Tenant has sold Parking Vouchers and VIP Passes, Tenant shall notify the Parking Official of the actual number of Parking Vouchers and VIP Passes sold by Tenant, and the Parking Official shall reserve that number of general and VIP parking spaces in the Civic Center Garage (collectively, the "**Reserved Parking Spaces**") in order to accommodate each patron with a Parking Voucher and VIP Pass on the specified date.

(f) If City is required to provide additional staff, work additional hours, or purchase additional equipment in order to accommodate the Parking Voucher, VIP Pass or parking validation process as described in this Section, or if the City agrees to keep the Civic Center Garage open for later hours to accommodate a specific event, the cost of such additional staff, equipment and/or additional hours, including additional accounting costs (the "**Additional Parking Cost**") shall be paid by Tenant; provided, City shall have first notified Tenant of any such Additional Parking Cost before incurring such cost.

(g) On or before the 10th day of each calendar month (or such alternative schedule as may be agreed to by City and Tenant), City shall notify Tenant of the amount due and owing by Tenant for parking for the previous month (the "**Parking Statement**"). The Parking Statement shall be the sum total of: (i) fifty percent (50%) of the Parking Sum (as defined below) for the Reserved Parking Spaces or, if higher for a specified event, the actual

number of Parking Vouchers and VIP Passes collected by the garage operator for that event; and (ii) the Additional Parking Cost, if any; minus (iii) fifty percent (50%) of the Parking Sum for the validated parking tickets; minus the full amount of the discount provided to the validated ticket holders. The "Parking Sum" shall be the Event Rate minus the applicable parking tax. The Parking Statement shall also state the amount due and owing by Tenant for parking taxes collected by Tenant. Such taxes shall be paid directly by Tenant to the garage operator, or such alternative as directed by the Director of Property, at the same time as monthly Rent payments are made hereunder, and Tenant shall provide a copy of the parking tax payment with each Rent payment. Following receipt of the Parking Statement, Tenant shall pay the amount due and shown on the Parking Statement to the City (or, with respect to the parking taxes, to the garage operator) each month as Additional Rent on or before the first day of the next calendar month; provided, however, (A) the payment shall be made by separate check payable to the City and County of San Francisco, and (B) to the extent the Parking Statement shows that the Tenant is owed money, then Tenant shall receive a credit against Base Rent for the following month and each month thereafter until the credit is exhausted. City may direct that the separate parking payment check be delivered either with the Base Rent or instead directly to the Civic Center Garage operator at the address provided by the City, with a copy of the Parking Statement and Tenant's parking payment check also sent to the Director of Property. Notwithstanding anything herein to the contrary, in no event shall Tenant receive any rent credit pursuant to Sections 9.7, 8.1, 11.2 or 12.1 against the amounts due and owing by Tenant under this Section 2.4.

(h) The parties agree to meet and confer, and to cooperate and act in good faith to implement the parking program as described in this Section 2.4 and that otherwise functions harmoniously with events at the Premises (e.g., establishing a "pay on entry" system for Event Nights). If necessary as part of such implementation, City, acting through the City Administrator and the Director of Transportation, and Tenant, may agree upon additional rules and procedures to ensure that both City and Tenant receive the benefit of the added parking revenue as described in this Section 2.4, and City shall take appropriate action as permitted under its existing contract with any third party garage operator with respect to such implementation. Without limiting the foregoing, if City implements a ticketless parking system or other technical or operational changes at the Civic Center Garage, the parties will make any necessary adjustments to the process or system described in this Section to ensure that both City and Tenant receive the benefit of the revenue sharing described in this Section. Any such implementing rules or procedures shall be in writing and signed by the parties, and shall not require the prior approval of the City's Board of Supervisors unless the City Attorney determines that such rules and regulations effect a material amendment to this Section 2.4.

2.5 Books and Records.

Tenant shall keep its Books and Records in an accurate manner according to generally accepted accounting principles consistently applied. "Books and Records" means all of Tenant's books, records, receipts, invoices, and accounting reports or statements relating to Naming Rights Revenue and the sale of tickets to each event at the Premises, and any other information or records relevant to the determination of Tenant's payment of Participation Rent. Tenant shall maintain a separate set of accounts, including bank accounts, to allow a proper determination of Participation Rent due from Tenant each Lease Year during the Term, and maintain such Books and Records throughout the entirety of the Term. If Tenant operates all or any portion of the Premises through a permitted Subtenant or Agent, Tenant shall cause such

Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

2.6 Audit

Tenant agrees to make its Books and Records available to City, or to any City auditor, or to any auditor or representative designated by City or City (hereinafter collectively referred to as "**City Representative**"), upon no less than thirty (30) days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Participation Rent. Tenant shall cooperate with the City Representative during the course of any audit. Such audit shall not occur more than once during any Lease Year and may be conducted, at City's cost, by the City Controller or his or her designee or by an independent accounting firm selected by City; provided, any such firm may not be compensated on a contingency basis. During any such audit, the City, the City Representative and the auditor shall not disrupt Tenant's operations in the Premises. In performing any such audit, neither the City, the City Representative nor the auditor shall talk to employees working at the Premises without Tenant's prior written consent (which consent shall not be unreasonably withheld). The Books and Records for the prior seven (7) Lease Years shall be kept and maintained and/or made available in San Francisco to City's Representative for the purpose of auditing or re-auditing these accounts at all times during the Term. If Tenant operates the Premises through one or more permitted Subtenants or Agents, Tenant shall require each such Subtenant or Agent to provide City with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, City shall deliver a copy of the audit report to Tenant. Within thirty (30) days of Tenant's receipt of City's auditor's report, Tenant shall notify City as to whether Tenant agrees or disagrees with the conclusions reached in City's auditor's report. After Tenant's notice, City and Tenant shall endeavor to resolve any disagreements regarding City's auditor's report. If City and Tenant are unable to resolve such disagreement regarding City's auditor's report within thirty (30) days of the completion of such audit, the parties will attempt to agree within the following thirty (30) days upon an independent nationally recognized accounting firm to review and mediate the matter. Each party shall pay its own costs and fees in connection with any mediation, and shall equally share the cost of the selected mediator. If the parties are not able to settle the matter through mediation within sixty (60) days, then either party may pursue all available remedies at law or in equity in accordance with the terms of this Lease.

If the audit, following the dispute and mediation process set forth above, reveals that Tenant has understated its Participation Rent for said audit period, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City, plus interest to the extent such payment is late pursuant to Section 2.9 [Interest on Delinquent Rent] below. If an audit reveals that Tenant has overstated its Participation Rent for said audit period, Tenant shall be entitled to a rent credit for either Base Rent or Participation Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Participation Rent for any audit period by Twenty-Five Thousand Dollars (\$25,000) or more, Tenant shall pay the cost of the audit. If Tenant materially and intentionally understates its Participation Rent for any audit period, or if Tenant materially understates its Participation Rent on three occasions during any ten (10)-year period, then, such understatement (or such third understatement during any ten (10)-year period) shall be an Event of Default without notice or cure rights and entitle City to all remedies under this Lease. For purposes of this Section, any understatement equal to or greater

than ten percent (10%) shall be deemed material unless such amount is less than Twenty-Five Thousand Dollars (\$25,000).

2.7 Manner of Payment of Rent.

Tenant shall pay all Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Base Rent and Participation Rent shall be payable at the times specified in Section 2.2 [Base Rent] and Section 2.3 [Participation Rent], respectively, without prior notice or demand. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due twenty (20) days following the giving by City of such written demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

2.8 Limitations on Abatement or Setoff.

Tenant shall pay all Rent, including any and all Participation Rent and Additional Rent, at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim whatsoever (except as specifically set forth in this Lease).

2.9 Interest on Delinquent Rent.

If any installment of Base Rent or Participation Rent is not paid within five (5) days following the date it is due, or if any Additional Rent is not paid within twenty (20) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at the Default Rate. If a delinquent payment and applicable late charge and interest thereon at the Default Rate is paid by Tenant to City within the applicable cure period, such payment shall constitute a cure of any Event of Default by Tenant for such delinquent payment.

2.10 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to City of Rent, or the late delivery of a Participation Rent statement, will cause City increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of City's rights or remedies hereunder, any Rent, if not paid within five (5) days following the due date, then Tenant shall immediately pay to City a late charge equal to five percent (5%) of such delinquent rent amount (the "Late Charge"). Such Late Charge shall accrue interest at the rate of ten percent (10%) per annum, compounded monthly, from the due date to the date of payment. Except as provided above, such late charge may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. The parties agree that such late charge represents a fair and reasonable estimate of the cost which City will incur by reason of a late payment by Tenant. Amounts due under this Section 2.10 [Late Charges] are in addition to, not in lieu of, amounts due under Section 2.9 [Interest on Delinquent Rent]. Payment of interest shall not excuse or cure any default by Tenant.

2.11 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during the Term of, or in connection with, this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, shall be deemed Additional Rent. City shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent and Participation Rent.

2.12 Net Lease.

It is the purpose of this Lease and intent of City and Tenant that, except as expressly stated to the contrary in this Lease, all Rent shall be absolutely net to City, so that this Lease shall yield to City the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall City be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any improvements.

Section 3 **USES**

3.1 Permitted Uses.

(a) Tenant shall use the Premises for the purpose of presenting music concerts, theatrical events, cultural and entertainment performances, consumer events, trade shows, spectator sports, area and corporate meetings, social functions and special events (the "Primary Use"). In connection with such Primary Use, Tenant may perform all acts reasonable and necessary in connection with the use, operation, development and maintenance of the Premises for the Primary Use, including: (i) the development and construction of the Initial Improvements, (ii) the preparation and sale of food and beverages for onsite, indoor consumption, of the type and quality offered for sale by Tenant and its members at comparable facilities, and (iii) the sale of merchandise related to the Primary Use of the type and quality offered for sale by Tenant and its members at comparable facilities. The foregoing permitted uses are collectively defined in this Lease as the "Permitted Uses." Tenant shall obtain all permits as may be required under applicable Law in accordance with Tenant's use of the Premises. Tenant's use and operations on the Premises shall be first-class consistent with Tenant's and its members' operations in other facilities throughout the nation (taking into account material differences in the venues in so far as they may impact Tenant's ability to meet this operational standard).

(b) Tenant shall have the right to add a restaurant or cafe to the Premises subject to: (i) Landlord's approval of the specific size and location, the tenant improvements, the hours of operation, and any additional rules and regulations deemed necessary or appropriate by Landlord, each in Landlord's sole discretion following environmental review; (ii) Tenant's receipt of all necessary permits and approvals for such use, including but not limited to any permits or approvals from the City's Planning Department and Building Inspection Division; and (iii) Landlord and Tenant's prior agreement as to any rent increase resulting from such use, as determined by Landlord and Tenant each in their sole discretion. All approvals and consents of

Landlord under this subsection shall be made by the City's Director of Property, in his or her sole discretion. If the above conditions for the addition of a restaurant or cafe are satisfied, the parties shall memorialize the agreement between the parties as an addendum to this Lease, which shall be attached to and incorporated herein as a part of this Lease and shall not require the prior approval of the City's Board of Supervisors.

3.2 Advertising and Signs.

Subject to City's prohibition on tobacco advertising and such future prohibitions as may be enacted by City and applied to all City-owned property during the Term (provided, such future prohibitions do not materially impact the Primary Use or Tenant's rights hereunder), Tenant shall have the right to install signs and advertising inside the Premises. Tenant and City shall each have the right to use the marquee on the front of the Building in connection with any events located at the Building and Tenant's staff shall, at no general overhead cost to City but subject to City's reimbursement of all out-of-pocket costs and expenses paid by Tenant to third parties, change the signage on the marquee as reasonably requested by City to advertise events on City Days after the last event held by Tenant before the applicable City Day. The Building is included on the National Register of Historic Places as part of San Francisco's Civic Center Historic District, and accordingly, Tenant may not place any advertisements or signs, including but not limited to awnings, canopies and banners, on the exterior of the Building, or any signs or advertising on the interior of the Building which are visible from the outside, without the City's Administrator's prior written consent, which consent (i) can be given or withheld in his or her sole discretion with respect to exterior signage and (ii) will not be unreasonably withheld with respect to interior signage.

3.3 Limitations on Uses by Tenant.

Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any waste on or about the Premises. Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by a standard form fire insurance policy or subject City to potential premises liability, and Tenant shall take commercially reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, except as set forth in Section 3.2 [Advertising and Signs] or as approved by City in its regulatory capacity in accordance with City's standard permitting process for the use of streets and sidewalks. Without limiting the foregoing, Tenant shall not conduct or permit on or about the Premises any of the following activities ("**Prohibited Activities**"): (i) any activity that creates a public nuisance; (ii) any activity that is not within the Permitted Uses or otherwise approved by the City's Director of Property in writing; (iii) any activity or object that will overload or cause damage to the Premises or include more persons that is permitted by the City's Fire Marshal; (iv) use of the Premises for sleeping or personal living quarters; or (v) any use by a group or organization that violates the nondiscrimination provisions set forth in this Lease. Upon request by either party, City and Tenant agree to meet and confer from time to time for purposes of developing and maintaining effective noise, security and crowd control programs and to address any other operational matters relating to the Premises.

3.4 Building Rules and Regulations.

Tenant shall establish and maintain reasonable rules and regulations for the Building consistent with industry standards. Furthermore, City may make reasonable additions or modifications to the rules and regulations, which shall be binding upon Tenant's users or licensees, provided that such additions or modifications shall not reduce City's obligations hereunder nor materially adversely interfere with Tenant's business in the Premises, and such additions or modifications are not in conflict with the provisions of this Lease and do not materially increase the burdens or obligations upon Tenant.

3.5 Security Matters.

Tenant at all times shall be responsible for on-site security in and about the Premises. Unless requested by Tenant or in response to an emergency or call for assistance, City police will not be responsible for day to day security in or around the Premises. Any response by City police to calls for assistance shall be at no charge so long as no charge is imposed for such assistance in similar situations and Tenant has otherwise complied with the provisions of this Section. Performances in the past have demonstrated that certain tours and events may present life and safety challenges. Tenant shall have an affirmative obligation to use and operate the Premises in a safe and secure manner for all patrons and staff. If a proposed or scheduled event has presented life/safety problems in previous concert seasons or in other tour locations and if the upcoming event is substantially similar to a prior event that experienced such problems, then Tenant shall consult with City and City's Police Department to determine appropriate security staff for the event. In the event that additional police or other security services are required, Tenant agrees to hire additional security staff and/or enter into an agreement with City's Police Department, and to pay for such additional services, in accordance with the provisions of San Francisco Administrative Code Chapter 10B.

3.6 Firearms and Ammunition Prohibition.

Subject to certain limited exceptions, San Francisco Police Code Section 617 prohibits the possession or sale of a loaded or unloaded firearm or the ammunition for a firearm, on City-owned property, including the Premises. Tenant agrees to comply with Police Code Section 617 and to inform its employees and agents on the Premises of this prohibition.

3.7 Name of Building and Theater/Arena.

Notwithstanding anything to the contrary set forth in this Lease, the Building in which the Premises are located shall be referred to as the "**Bill Graham Civic Auditorium**", and Tenant shall not have any right to rename the Building or sell or change the name of the Building in any way; provided nothing in the foregoing shall limit the City's right to change the name of the Building. During the Term, Tenant shall have the right to use such name with respect to Tenant's activities under this Lease. In the event of any trademark or copyright infringement, misappropriation or similar claim is asserted against Tenant or City by any third party other than Tenant, its members or affiliates, as a result of the name of the Building, then City shall either defend or settle such claim at City's cost or rename the Building. Tenant shall have the right to sell, and shall in fact sell, sponsorships and/or naming rights to the theater or arena located within the Premises; provided any such sale shall (i) be designed to maximize Participation Rent, (ii) not extend beyond the term of this Lease and shall terminate automatically upon any termination of this Lease, and (iii) not be to a person or entity controlled by, controlling or under

common control with Tenant or its members unless Tenant obtains the prior written consent of the City Administrator. City agrees that the name or names used by Tenant, its affiliates or sponsors, from time to time, to identify the theater or arena located within the Premises, and all other service marks, trademarks, names, titles, descriptions, slogans, emblems or logos used, from time to time, in connection with the theater or arena shall at all times be the property of Tenant or its affiliates or sponsors, and City shall not use the same in any manner except as approved by Tenant in writing, which approval may be withheld in Tenant's sole but good faith discretion.

Section 4 **TAXES AND ASSESSMENTS**

4.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Subject to Tenant's rights under Section 5.1 [Right of Tenant to Contest Impositions and Liens and Laws], Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes legally assessed, levied or imposed by applicable Laws on the Premises or any of the improvements or personal property located on the Premises or arising out of Tenant's leasehold estate created by this Lease, to the full extent of installments or amounts payable or arising during the Term. All such taxes shall be paid directly to City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by City's Assessor; provided, that Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5 [Contests]. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to comply with these requirements.

(b) Other Impositions. Subject to Tenant's rights under Section 5.1 [Right of Tenant to Contest Impositions and Liens and Laws] Tenant shall pay or cause to be paid all Impositions to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c) [Prorations]), which may be legally assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any of the improvements or personal property now or hereafter located thereon, the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, or any subtenant or any other person may have acquired pursuant to this Lease. Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent

payment of any such Imposition. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, City's interest as landlord under this Lease.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

4.2 City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5 [Right of Tenant to Contest Impositions and Liens and Laws], if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency and fails to pay same thereafter for more than ten (10) days after written demand from City that Tenant pay same, City, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within thirty (30) days following demand.

Section 5 **CONTESTS**

5.1 Right of Tenant to Contest Impositions and Liens and Laws.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any possessory interest tax, property tax, or other Imposition or other lien, charge or encumbrance, against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other person to improve the Premises or any portion of the Premises, or the application of any Law to Tenant or the Premises, by appropriate proceedings conducted in good faith and with due diligence. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition or Law in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition or Law to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien

release bond or other security reasonably satisfactory to City in connection with any such contest. Without limiting Section 17 [Assignment and Subletting], Tenant shall Indemnify City for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, resulting from Tenant's failure to pay any Imposition or Tenant's contest of an Imposition or Law.

Section 6 **COMPLIANCE WITH LAWS**

6.1 Compliance with Laws and Other Requirements.

Tenant shall promptly comply, at no cost to City, with all present or future Laws relating to the Premises or the use or occupancy thereof and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof. Tenant acknowledges that the Permitted Uses under Section 3.1 [Permitted Uses] do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits. Tenant further understands and agrees that it is Tenant's obligation, at no cost to City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with all Disabled Access Laws. The parties acknowledge and agree that Tenant's obligation to comply with all Laws provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make repairs and alterations to the Premises other than the making of structural repairs or alterations to the Building except to the extent such structural repairs or alterations are required due to Tenant's alterations to or Tenant's particular use of the Premises. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

6.2 Regulatory Approvals.

(a) Responsible Party. Tenant understands and agrees that Tenant's use of the Premises and construction of the Initial Improvements hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Without limiting the other indemnification provisions of this Lease, Tenant shall Indemnify City and any Indemnified Party from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to obtain or comply with any Regulatory Approval or in connection with the litigation against or appeal or contest of, any Regulatory Approval or any conditions thereof.

(b) City Acting as Owner of Real Property. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity, as the holder of fee title to the Premises, and not in its capacity as a regulatory agency of City. Tenant understands that City's entering into this Lease shall not be deemed to imply that Tenant will be able to obtain any

required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including City itself in its regulatory capacity. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

Section 7 **TENANT'S MANAGEMENT AND OPERATING COVENANTS**

7.1 Covenants.

(a) Following completion of the Initial Improvements, Tenant shall use, maintain and operate the Premises, or cause the Premises to be used, maintained and operated, in a manner consistent with standards for the maintenance and operation of a first-class concert/live performance venue, consistent with Tenant's and its' members other operations (taking into account material differences in the venues in so far as they may impact Tenant's ability to meet this operational standard). Tenant and its affiliates and members operate a number of similar venues throughout California and package and promote concert tours on a regular basis. City has entered into this Lease with the understanding that Tenant will use commercially reasonable efforts to bring performances to the Premises which will promote maximum attendance at the Premises. Tenant agrees that events booked at the Premises will be of a quality comparable to other events held at similar venues owned or operated by Tenant and/or its members.

(b) Tenant shall be exclusively responsible, at no cost to City, for the use, management and operation of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Premises, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) security services, and (e) such other services as may be commercially reasonably necessary or appropriate for the Permitted Uses. In connection with the foregoing, Tenant covenants that it will use commercially reasonable efforts to: (i) maximize the use of the Premises for concerts and other live performances; (ii) promote and market the use of the Premises for appropriate acts and performers, and advertise the acts and performances consistent with Tenant's and its' members practices with respect to other venues; (iii) provide for the sale of food, beverages (alcoholic and nonalcoholic) and merchandise consistent with other similar venues operated by Tenant and its members and in accordance with applicable Laws; (iv) provide appropriate crowd control, security, admission, and supervision of box office procedures and staffing; (v) provide and issue tickets for all ticketed events at the Premises, and maintain appropriate, verifiable evidence of all ticket sales and revenues; (vi) provide appropriate management staff, including but not limited to a general manager of operations at the Premises, and notify City of any change in the general manager; (vii) purchase supplies and materials consistent with the foregoing; (viii) adequately fund the use, maintenance and operation of the Premises consistent with other venues operated by Tenant and its members; (ix) maintain a reasonable annual repair and capital plan and budget, and sufficient reserves to fund such plan in accordance with the budget, and (x) conserve and not waste energy in its operations in the Premises.

(i) Tenant further agrees to cooperate and work with City and its agents and managers of City's convention facilities, and permit the use of the Premises for convention activities and trade shows, subject to the payment of fees, the execution of contracts,

and otherwise consistent with Tenant's booking policies, during times in which Tenant has not previously booked other events at the Premises.

(c) For purposes of future negotiations relative to Rent for any extension period, Tenant agrees it shall maintain, in accordance with generally acceptable accounting principles, books and records relating to all expenses and revenues at the Premises, and shall share the non-confidential portions of such books and records, certified as true and correct in all material respects by Tenant, with City.

7.2 Non-Operation of Premises.

In the event that Tenant has at any time during the Term booked fewer than twenty (20) Qualified Events in the aggregate over the previous twelve (12) month period (not including any period of time the Premises are not capable of being used for the Permitted Uses due to casualty, condemnation or other event of Force Majeure or due to construction of the Initial Improvements or Subsequent Construction and not including any period of time within eighteen (18) months of the Commencement Date), the same shall not constitute an Event of Default under the Lease, but City shall have the right to terminate the Lease upon one hundred eighty (180) days prior written notice ("**Booking Default Notice**") to Tenant; provided, however, if at any time during such one hundred eighty (180) day period, Tenant has booked twenty (20) or more events in the aggregate during the then previous twelve (12) month period (not including any period of time the Premises are not capable of being used for the Permitted Uses due to casualty, condemnation or other event of Force Majeure or due to construction of the Initial Improvements or Subsequent Construction), then such termination of the Lease by City shall become null and void and of no force or effect. Notwithstanding the immediately preceding sentence to the contrary, in the event that the City gives a Booking Default Notice to Tenant at any time during the forty (40) month period following the Commencement Date, then the one hundred eighty (180) day cure period specified above shall be extended to three hundred sixty-five (365) days.

7.3 Patent and Copyrights.

Tenant shall require in its contracts with persons holding or promoting events at the Premises that such persons shall obtain all necessary approvals for or arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of any events which Tenant books at the Premises. Tenant shall indemnify City from and against any and all claims relating to any breach of patent or copyright rights or patent or copyright infringements or violations of laws as they relate to the Premises.

Section 8 **REPAIR AND MAINTENANCE**

8.1 Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no expense to City, the Premises (including, without limitation, the Initial Improvements, the exterior signage, and all interior portions of the Building, including but not limited to the floors, plumbing, electrical wiring, elevators, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Subject to Section 8.1(c) [City's Duty to Maintain], Section 12 [Utility and Other Services] and Section 13 [Damage or Destruction] of this Lease, Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements thereof, ordinary or extraordinary, foreseen or unforeseen but excluding reasonable wear and tear. Tenant shall make such repairs

with materials, apparatus and facilities with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired or replaced. Without limiting the foregoing, Tenant shall promptly make all such repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics, which contractors or mechanics shall be approved by City if the proposed contract exceeds Five Hundred Thousand Dollars (\$500,000), (c) in a manner and using equipment and materials that will not interfere with or impair the Building Systems, and (d) in accordance with any applicable Laws. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

(b) Potential Rent Credit for Tenant Repairs. Notwithstanding anything to the contrary set forth above, in the event any Major Repair is required to the Premises during the Term, Tenant shall have the right, with the prior written approval of the City Administrator, which approval the City Administrator may give or withhold in his or her sole discretion, to a rent credit against future Rent in the amount of the actual out-of-pocket third party costs incurred by Tenant in performing the Major Repair. Upon the discovery of the need for a Major Repair, Tenant shall notify the City Administrator of the same as well as any facts or circumstances known by Tenant relative to the Major Repair and the anticipated repair cost. Any rent credit granted to Tenant shall be on the terms and conditions set forth in the City Administrator's written approval, shall not exceed Tenant's actual third party out-of-pocket repair cost (as substantiated by Tenant upon completion by satisfactory evidence), and shall be applied only against future Rent under this Lease. Any Major Repair work shall be performed by Tenant in accordance with Section 10 [Subsequent Construction; Enhanced Improvements].

(c) City's Duty to Maintain. Subject to the provisions of Section 13 [Damage or Destruction], City shall repair and maintain the exterior and the foundation, load bearing walls and other structural portions of the Building, including without limitation the roof and the exterior walls (but not including any exterior signage installed or maintained by Tenant); provided, however, (i) Tenant shall reimburse City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant or its Agents, and (ii) in the event of any maintenance or repair costing in excess of Three Million Dollars (\$3,000,000) (subject to a CPI adjustment on the date such repair is required) that is not subject to Section 13 [Damage or Destruction, City shall have the right but not the obligation to repair and maintain the exterior and structure of the Building. If City elects to not make the repair, then City shall so notify Tenant and City or Tenant may either terminate this Lease by providing the other written notice of termination or elect to make such repair, in which case Tenant shall receive a rent credit against Base Rent and Participation Rent in the amount of the actual third party costs incurred by Tenant in making the repair; provided, however, such work shall be performed following an open and fair competitive bid process approved in writing by the City Administrator in his or her reasonable discretion. Any and all licenses and agreements entered into by Tenant for use of the Premises must acknowledge Tenant's and City's repair and termination rights as set forth in this Lease, and waive any rights against City in the event of any such repair or termination as permitted by this Lease. Tenant waives any and all claims for damages, injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss, in the event of City exercises its right to repair the Premises or to terminate this Lease following damage or destruction or as otherwise permitted hereunder. City, at City's cost, shall also repair and maintain Room 202 in good condition and shall repair any damage to the Premises caused by City in connection with City's use of Room 202, City's access

through the Premises to Brooks Hall, or City's use of the Premises pursuant to Section 1.2(a), reasonable wear and tear excepted. In making any such repairs, City shall use commercially reasonable efforts to minimize disruption to Tenant's use of the Premises.

(i) Tenant Waivers. Except as expressly set forth above, (i) City shall have no obligation to make repairs or replacements of any kind or maintain the Premises or any portion thereof, and (ii) Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(ii) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under this Lease, asserting that the requirements of such insurance policy or policies are not being met. City shall deliver to Tenant, promptly after receipt, a copy of any notice which City may receive from time to time from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws.

Section 9 **INITIAL IMPROVEMENTS**

9.1 Tenant's Obligation to Construct the Initial Improvements.

Tenant, at its sole cost and expense, and through its one or more general contractors approved by City (collectively the "**Contractor**"), shall furnish and install within the Premises the Initial Improvements pursuant to the process described below. The Initial Improvements shall be constructed in three phases ("**Phase 1**", "**Phase 2**", and "**Phase 3**", respectively) as more particularly described on *Exhibit B*. The Phase 1 Construction Period, the Phase 2 Construction Period, and the Phase 3 Construction Period shall begin and end as set forth in the Basic Lease Information. The cost of designing constructing and installing the Initial Improvements shall be not less than Ten Million Dollars, as described in Section 9.5 below. The Parties anticipate that the Initial Improvements for each of the Phases shall be divided as set forth in *Exhibit B*. If the cost incurred in connection with a previous Phase is in excess of the minimum amount required as shown on *Exhibit B* for such Phase, the minimum amount of cost required with respect to the subsequent Phase shall be reduced by the cost in excess of the minimum amount for the prior Phase.

(a) Design Documents. Tenant shall submit to the City schematic design plans for the Initial Improvements which plans shall be subject to the approval of the City Administrator (the "**Design Documents**") which approval shall not be unreasonably withheld.

(b) Construction Documents. Based on the approved Design Documents and any further adjustments approved by City, on or before the date that is one hundred eighty (180) days following the Commencement Date, Tenant shall cause its architect or engineer approved by the City (the "**Architect**" or "**Engineer**", as applicable) to prepare and submit to the individual assigned by the City Administrator to be City's representative, within one hundred

eighty (180) days following the Commencement Date, for City's approval the Construction Documents. Such Construction Documents shall be subject to approval by City as set forth below. In connection with the Initial Improvements, the City approves ELS Architecture and Urban Design as the Architect.

(i) City's Approval of Plans. The Construction Documents (and any Change Orders thereto) shall be subject to approval by the City Administrator, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Construction Documents or proposed Change Order, City shall promptly either approve or disapprove the submission; provided, if City disapproves the submission, it shall state the reason for the disapproval and of the revisions that City reasonably requires in order to obtain approval consistent with the terms of this Lease. As soon as reasonably possible thereafter, but in no event later than fifteen (15) business days after receipt of such disapproval notice, Tenant shall submit to City documents incorporating the required revisions. Such revisions shall be subject to approval by City under the same process outlined above; provided, City shall not withhold approval of Construction Documents based on a matter that was previously approved by City as part of the approved Design Documents. Without limiting the generality of the foregoing, City agrees to approve or disapprove change order requests within three (3) business days after receipt from Tenant, and if not approved or disapproved within said period, Tenant may send a second notice to City which notice must state prominently "THIS IS A SECOND REQUEST. FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL BE DEEMED TO CONSTITUTE AN APPROVAL." If City still fails to respond in writing within five (5) business days after receipt of the second notice, such change order shall be deemed approved by City acting in its proprietary capacity under this Lease. In any event, City's failure to approve or disapprove a change order request within the initial three (3) business day period shall serve to extend the Construction Period and any deadlines for Tenant's performance of the Initial Improvements in the same manner as Force Majeure if such failure impacts a critical path item and does therefore impact Tenant's schedule.

(ii) Payment for Plans. Tenant shall pay for all costs of preparing and completing the Design Documents and the Construction Documents.

(iii) Change Orders. If following City's approval of the Construction Documents, Tenant requests or is required to make any Change Order, Tenant shall provide City with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Change Order. Any such Change Order shall be subject to City's prior written approval, in accordance with subparagraph (c) above. No approval by City of any such Change Order shall relieve or modify Tenant's obligations hereunder to complete the construction of the Initial Improvements, nor shall any such approval limit any of City's rights or remedies hereunder or under the Lease. Tenant shall be solely responsible for the cost of the Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto.

9.2 Permits.

Tenant shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Initial Improvements, and upon request shall deliver copies of all of such permits and approvals to City, Tenant shall use its commercially reasonable

efforts to obtain all such approvals and permits as promptly as possible, in order to complete construction of the Initial Improvements in accordance with the Construction Schedule. Tenant shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection.

If despite Tenant's commercially reasonable efforts Tenant has not obtained all entitlements necessary to commence construction of the Initial Improvements on or before the date which is one hundred twenty (120) days after Tenant's submittal of a completed application therefor, Tenant shall have the right to terminate this Lease upon written notice to City.

9.3 Construction of Initial Improvements.

Following City's approval of the Construction Documents, Tenant shall cause the Initial Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in material conformity with the Construction Documents, as revised by any Change Orders, and the terms of this Lease. City shall not have any obligation with respect to any such work.

9.4 Construction Schedule.

(a) Diligent Prosecution. Phase 1, Phase 2 and Phase 3 shall each begin upon Tenant's notification to City that Tenant has permits and is ready to start construction of that Phase, provided that Phase 1 must begin on or before the date that is 16 months after the Commencement Date, Phase 2 must begin on or before the date that is 24 months after the Commencement Date, and Phase 3 must begin on or before the date that is 36 months after the Commencement Date. Tenant's failure to give such notice on or before the required dates as set forth above shall be an Event of Default. The "**Construction Period**" shall be the period equal to the aggregate of the Phase 1 Construction Period, the Phase 2 Construction Period and the Phase 3 Construction Period but in all events shall terminate upon expiration of forty (40) months following the Commencement Date. Tenant shall commence construction of Phase 1 on the Phase 1 Commencement Date, commence construction of Phase 2 on the Phase 2 Commencement Date, and commence construction of Phase 3 on the Phase 3 Commencement Date. In each Phase, Tenant shall diligently pursue construction to completion subject to Force Majeure. Prior to commencement of construction of each Phase Tenant shall have obtained all required permits for construction in accordance with the approved construction documents. Tenant shall keep City apprised of the status of permit approval and the progress of construction. Upon City's request, Tenant or its Contractor shall furnish City with periodic reports on the construction. At all times during the construction of the Initial Improvements, City shall have the right to enter the Premises to inspect the Premises, provided such inspections do not unreasonably interfere with the construction and provided that City coordinates such access with Tenant at twenty-four (24) hours in advance of such access. Such access shall be subject to Tenant's reasonable security and safety measures..

(b) Inspection Notice. Tenant shall notify City when each Phase of the Initial Improvements are Substantially Completed, and City and Tenant shall schedule an inspection of the Premises in order for City to confirm Substantial Completion.

(c) Substantial Completion. A representative of City and a representative of Tenant shall walk through the Premises within thirty (30) days following the date each Phase of the Initial Improvements are Substantially Completed to identify items which have not yet been

completed. Within fifteen (15) business days following such walk-through, City shall have the right to present to Tenant a written "**punchlist**" consisting of any items that have not been finished in accordance with the Construction Documents. Tenant shall promptly complete all defective or incomplete items identified in such punchlist within sixty (60) days after the delivery of such list, or such longer period as may be reasonably necessary to complete the same. City's failure to include any item on such list shall not alter Tenant's responsibility hereunder to complete all Initial Improvements in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

(i) Force Majeure. In the event of any Force Majeure, Tenant shall give prompt written notice to City of the occurrence of such event and the projected delay in performance, and thereafter shall keep City regularly informed of the status of such Force Majeure.

(ii) Time of the Essence. Time is of the essence with respect to all provisions of this Section 9 [Initial Improvements], including, without limitation, the date for Substantial Completion.

9.5 Initial Improvements Cost and Potential Additional Improvements.

Tenant shall pay for the cost of designing, constructing and installing the Initial Improvements (as defined below) up to a total sum of Ten Million Dollars (\$10,000,000) (the "**Initial Improvement Cost**"), in accordance with the preliminary budget attached hereto as part of *Exhibit B*. Tenant shall have the right to alter line items in the budget (not including Tenant's construction management costs) by spending more or less within each line item by up to twenty percent (20%) without City's prior consent; provided, any alteration of a line item by twenty percent (20%) or more shall be subject to the prior review and approval of the City's Director of Property, which approval shall not be unreasonably withheld. Within ninety (90) days following the completion of each Phase of the Initial Improvements, Tenant shall prepare a detailed accounting of all third party costs incurred by Tenant in completing the Initial Improvements in that Phase and Tenant's actual construction management costs, together with appropriate backup documentation as set forth below (the "**Cost Statement**"), and shall deliver the Cost Statement to City. Tenant's construction management costs shall not exceed reasonable and customary amounts in total and on an hourly basis. In the event that Tenant incurred third party and construction management costs to complete the Initial Improvements that are less than the Initial Improvement Cost, Tenant shall suggest additional improvements to the Premises to make up the difference. The proposed additional improvements shall be subject to City Administrator's prior written approval, which approval shall not be unreasonably withheld or delayed. Upon agreement of the additional improvements, Tenant shall promptly complete such improvements and upon completion, provide an updated Cost Statement to demonstrate that Tenant has spent the Initial Improvement Cost. Tenant understands and agrees that Tenant's agreement to spend the Initial Improvement Cost on the Premises is a material part of the consideration to City for this Lease, and City would not be willing to enter this Lease without such agreement. Tenant's failure to spend the Initial Improvement Cost as set forth herein, or Tenant's submission of false statements regarding the Initial Improvement Cost, shall be a material default under this Lease.

9.6 Required Documentation of Costs.

Tenant shall provide City with copies of supporting data substantiating the Tenant's payment of costs for the completion of each Phase of the Initial Improvements. At City's

request, Tenant shall also provide (i) all invoices received by Tenant from the Contractor or other third parties in connection with the construction of the Initial Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262 and executed by each subcontractor and material supplier, and (iii) such additional documentation as City may reasonably request.

9.7 Rent Credit for Improvement Work.

Upon Tenant's completion of the Initial Improvements, Tenant shall receive a credit against Participation Rent in the amount of the actual third party costs incurred by Tenant in completing the Initial Improvements, together with Tenant's actual construction management costs as set forth in Section 9.5 [Initial Improvement Cost and Potential Additional Improvements] as shown and evidenced by the Cost Statement, in excess of Ten Million Dollars (\$10,000,000); provided that (i) Tenant shall not be entitled to a rent credit for costs in excess of Twelve Million Five Hundred Thousand Dollars (\$12,500,000) unless the City Administrator approves such excess expenditures in writing and agrees that such additional costs can be included for purposes of determining the amount of the rent credit available to Tenant under this Section, (ii) Tenant shall not be entitled to a rent credit for any work that is additive to the Initial Improvements as defined in this Lease that were not approved by the City Administrator in advance pursuant to Section 9.1, and (iii) Tenant shall not be entitled to a rent credit to the extent the excess costs are due to penalties, liquidated damages or Tenant's negligence. As soon as Tenant becomes aware of that it intends to spend more than Ten Million Dollars (\$10,000,000) on the Initial Improvements, Tenant shall notify the City Administrator of such fact and the reasons therefore. In addition, if Tenant seeks a rent credit for amounts above Twelve Million Five Hundred Thousand Dollars (\$12,500,000), Tenant shall request approval of the costs and the rent credit from the City Administrator as soon as Tenant becomes aware of the potential overage. The rent credits awarded to Tenant under this Section, if required, shall continue for such period as is necessary to recover the total rent credit amount; provided in no event shall they continue beyond Lease Year 10. Accordingly, if the total third party Initial Improvement costs incurred by Tenant as set forth above is Eleven Million Dollars (\$11,000,000), then Tenant shall receive a rent credit in the amount of One Million Dollars (\$1,000,000; or 100% of the amount over Ten Million Dollars) and such rent credit shall be applied against Participation Rent; provided, if total Participation Rent during any Lease Year does not equal or exceed such amount, then the rent credit will carry forward in future years and continue to be applied against Participation Rent until the total rent credit is exhausted or until the end of Lease Year 10, whichever comes first. In the event of an early termination of the Lease for any reason other than a default by City, City shall not be liable for the payment or reimbursement to Tenant of any unused rent credit hereunder.

Section 10 **SUBSEQUENT CONSTRUCTION; ENHANCED IMPROVEMENTS**

10.1 Enhanced Improvements.

During the period from the Commencement Date to the Phase 1 Commencement Date, City and Tenant shall endeavor to obtain funding, without any obligation to do so, for the construction of additional improvements to the Premises (the "Enhanced Improvements") in addition to those Improvements constituting the Initial Improvements. The Enhanced Improvements, if any, shall be as mutually agreed by City and Tenant. All Enhanced

Improvements shall be considered to be Subsequent Construction and shall be subject to the provisions otherwise applicable to Subsequent Construction provided that Tenant shall not be responsible for the cost of any Enhanced Improvements and Enhanced Improvements shall only be constructed if financing sources mutually agreeable to City and Tenant are identified and funded so as to cover the entire cost of any and all Enhanced Improvements.

10.2 City's Right to Approve Subsequent Construction.

Following completion of the Initial Improvements, Tenant shall not make or permit any alterations to the Building or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building, and shall not make or permit any construction, alterations, installations, additions or improvements (collectively, "Subsequent Construction"), in, to or about the Premises, except for Minor Alterations, without City's prior written consent in each instance, which consent shall not be unreasonably withheld. All Subsequent Construction shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics (which contractors or mechanics shall be subject to the prior approval of City if the proposed work exceeds Five Hundred Thousand Dollars (\$500,000)), and subject to any conditions that City may reasonably impose at the time of approval. At least twenty (20) days before commencing any Subsequent Construction, excluding any Minor Alterations, Tenant shall notify City of such planned Subsequent Construction. Tenant shall follow all of the procedures and requirements set forth in Section 9 [Initial Improvements] in connection with any Subsequent Construction.

10.3 Construction Documents in Connection with Subsequent Construction.

With regard to any Subsequent Construction (excluding Minor Alterations), Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed schematic drawings, and following City's approval of such schematic drawings, preliminary and final Construction Documents which are consistent with the approved schematic drawings. City may waive the submittal requirement of schematic drawings if it determines in its reasonable discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall approve or disapprove Construction Documents submitted to it for approval within fifteen (15) business days following receipt, and any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents, City shall promptly review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection. Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's written objections to the extent acceptable to Tenant. Tenant shall resubmit such revised portions to City as soon as possible after receipt of the notice of disapproval. City shall approve or disapprove such revised portions in the same manner as provided above for approval of Construction Documents (and any proposed changes therein) initially submitted to City.

10.4 Construction.

(a) Conditions. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City: (i) City shall have approved the Final Construction Documents; (ii) Tenant shall have obtained all permits and other regulatory approvals necessary to commence such construction; and (iii) Tenant shall have submitted to City in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds Five Hundred Thousand Dollars (\$500,000) Tenant shall also submit, at City's request, evidence reasonably satisfactory to City, of Tenant's ability to pay such costs as and when due.

(b) Reports. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure. During periods of construction, Tenant shall submit to City upon City's reasonable request, but not more frequently than monthly, written progress reports, along with appropriate backup documentation. City shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

Section 11 **GENERAL PROVISIONS FOR ALL CONSTRUCTION**

11.1 Construction Standards.

All construction on the Premises shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

11.2 General Conditions.

All construction on the Premises shall be subject to the following terms and conditions:

(a) All construction work shall be performed in compliance with all Laws, including but not limited to Disabled Access Laws and any historic preservation requirements;

(b) Tenant shall be responsible for all required insurance, and with respect to contracts for work in excess of Five Hundred Thousand Dollars (\$500,000), Tenant shall, in selecting subcontractors for each major trade, follow such bidding process as is approved by the City Administrator in advance;

(c) Tenant shall resolve any and all disputes arising out of the construction in a manner which shall allow work to proceed expeditiously;

(i) In the event that Tenant encounters any asbestos containing materials (ACM) in the Building, Tenant agrees to be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal and disposal of such ACM and all costs thereof; provided, however, in the event Tenant discovers ACM in the Building during the first five (5) months of the Term and Tenant reasonably determines that it cannot complete the Tenant Improvements for Ten Million Dollars (\$10,000,000) or less as a

result of such ACM, then Tenant shall notify City of the same, and if the parties are not able to reach agreement on the cost and scope of ACM work and any rent credit therefore, then Tenant shall have the right to terminate this Lease with no liability to Tenant so long as Tenant restores the Premises to its condition as of the Effective Date; and

(ii) City and its Agents shall have the right to enter areas in which construction is being performed to inspect the progress of the work provided such inspections do not unreasonably interfere with the construction and City coordinates such access with Tenant at least two (2) business days in advance of such access. Such access shall be subject to Tenant's reasonable security and safety measures. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

11.3 Tenant's Duty to Notify City.

Tenant shall promptly notify City in writing of (i) any written communication that Tenant may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building or any completed improvements fail in any respect to comply with applicable laws, rules and regulations; (ii) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; and (iii) any known default by any contractor or subcontractor or material supplier, or any known material adverse change in the financial condition or business operations of any of them.

11.4 Prevailing Wages.

Tenant agrees that any person performing labor in the construction on the Premises shall be paid not less than the highest prevailing rate of wages and that Tenant shall include, in any contract for construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant further agrees that Tenant shall comply with all the provisions of Section 6.22(E) of the San Francisco Administrative Code.

11.5 Tropical Hardwood and Virgin Redwood Ban.

Neither Tenant nor any of its contractors shall provide any items to City in the construction of improvements or otherwise in the performance of this Lease that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages as set forth in Chapter 8.

11.6 Approvals.

Tenant understands and agrees that City is entering into this Lease in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of the plans for any construction (including the Design Development Documents or Construction Documents) nor any other approvals by City hereunder shall be deemed to constitute approval of any governmental or regulatory authority

with jurisdiction over the Premises. All approvals or other determinations of City as landlord hereunder may be made by City's Director of Property unless otherwise specified herein.

11.7 Safety Matters.

Tenant, while performing any construction or maintenance or repair of the Building, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its work.

11.8 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Tenant agrees to comply with the First Source Hiring Ordinance to the extent applicable and shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

11.9 Construction Improvements that Disturb or Remove Exterior Paint.

Tenant, on behalf of itself and its Agents, employees, officers and contractors, shall comply with all requirements of the San Francisco Building Code Chapter 36 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Tenant, its Agents, employees, officers and contractors shall give to City three (3) business days prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Tenant acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 36 of the San Francisco Building Code does not constitute notification to City as Tenant under the Lease and similarly that notice under the Lease does not constitute notice under Chapter 36 of the San Francisco Building Code. Further, Tenant and its Agents, employees, officers and contractors, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Tenant covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 36 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

11.10 Preservative-Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

11.11 Resource Efficient City Buildings and Pilot Projects.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

11.12 As-Built Plans and Specifications.

With respect to the Initial Improvements and any Subsequent Construction affecting the structural elements of the Building, Tenant shall furnish to City one copy of as-built plans and specifications (reproducible transparencies and CAD files) within one hundred twenty (120) days following completion; provided, however, Tenant shall continue to own the rights to such as built plans and specifications until the expiration or earlier termination of the Lease.

11.13 Title to Improvements.

Except for Tenant's Personal Property (as described in the next Section), all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Initial Improvements and any Subsequent Construction, shall be and remain City's property. Tenant shall have the right to use such property at the Premises during the Term and with respect to City's personal property, Tenant shall have the right to remove and safely store the same at any time during the Term, provided Tenant shall return the same to the Premises upon the expiration or earlier termination of the Lease. Notwithstanding anything to the contrary in the Lease, equipment, additions and other property attached or affixed to or installed in the Premises by Tenant which can be removed without structural damage to the Premises (e.g., sound systems, seating, lights, and similar improvements), but not including any such items if included as part of the Initial Improvements, shall remain Tenant's property and may be removed at any time so long as Tenant repairs any damage to the Premises caused by such removal. Tenant shall not have the right to remove the Initial Improvements or any improvements or property for which Tenant receives rent credits, all of which shall be delivered to City upon Lease termination or expiration.

11.14 Tenant's Personal Property.

All Tenant's Personal Property shall be and remain Tenant's property (not including the Initial Improvements, which are and shall remain City's property). Tenant may remove its Personal Property at any time during the Term. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

11.15 City Cooperation.

Upon Tenant's request, City, acting in its proprietary capacity as a landlord but not in any regulatory capacity, shall reasonably cooperate with Tenant, in accordance with industry custom for landlords, in connection with Tenant's applications for permits and other governmental approvals in connection with the operation of the Premises or construction of any improvements under this Lease. Nothing in the foregoing shall limit or alter City's discretion as landlord for approvals or consents as described elsewhere in this Lease.

Section 12 **UTILITY AND OTHER SERVICES**

12.1 Utilities and Services.

(a) City shall provide water, electricity, gas and steam to the Premises, subject to the terms and conditions contained therein. Tenant shall purchase (i) all of its water, electricity, gas and steam for the Premises from the City utility company, Hetch Hetchy Water & Power, at then prevailing market rates for comparable types of load so long as it is reasonably available for Tenant's needs, and (ii) all of its other utility services (other than phone and telecommunications) from City so long as City is in the business of providing such utility services and City charges its standard rates for such services. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant acknowledges that as of the Commencement Date, City (including its Public Utilities Commission) is the sole and exclusive provider to the Premises of certain public utility services, including water, electricity, gas and steam. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent, except as expressly set forth herein to the contrary. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any losses arising from or in connection with City's provision (or failure to provide) public utility services.

(b) Notwithstanding anything to the contrary herein, in the event the Tenant's cost of water, electricity, gas and steam at the Premises for any Lease Year exceeds Two Hundred Thousand Dollars (\$200,000), as adjusted by CPI at the start of each Lease Year (the "Utility Threshold"), Tenant shall be entitled to a prospective rent credit against Base Rent and Participation Rent in the amount of fifty percent (50%) of such costs in excess of the Utility Threshold for each such Lease Year. The rent credits awarded to Tenant under this Section for each Lease Year, if required, shall continue for such period as is necessary to recover the total

rent credit amount, and if the total Base Rent and Participation Rent during any Lease Year does not equal or exceed such amount, then the rent credit will carry forward in future years and continue to be applied against Base Rent and Participation Rent until the total rent credit is exhausted; provided, the provisions of this Section shall not apply to and Tenant shall not earn rent credits during the Extended Term (if any) or have the right to offset any Rent during the Extended Term even if Tenant has not previously exhausted its rent credits under this subsection at the start of the Extended Term.

12.2 Excess Use.

If Tenant requires any utilities or services not provided by City hereunder, Tenant shall pay any and all costs of such utilities and services. Without limiting the foregoing, Tenant shall not: (a) connect or use any apparatus, device or equipment that will impair the proper functioning or capacity of the Building Systems; or (b) connect any apparatus, device or equipment through electrical outlets or facilities except in the manner for which such outlets or facilities are designed; or (c) maintain at any time an electrical demand load in excess of the amount the Building's electrical systems were designed to support.

12.3 Interruption of Services.

City's obligation to provide utilities and services for the Premises are subject to applicable Laws and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant; provided, however, that if such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises for a period of five (5) or more consecutive business days, then Tenant shall have the right, as Tenant's sole remedy, to abate the Base Rent based on the extent such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability.

12.4 Water and Energy Conservation; Mandatory or Voluntary Restrictions.

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines or to save power, water or other utility charges, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent and Additional Charges hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that City shall consult with Tenant prior to the construction of any such alterations in order to minimize the effect of any such improvement on the operations of Tenant under this Lease. Without limiting the foregoing, Tenant acknowledges that City shall have the right to install, at City's cost, solar panels, wind

turbines and other energy-generating equipment on the roof of the Building so long as: (i) the same shall not interfere with equipment installed by Tenant on the roof in accordance with the terms of this Lease; and (ii) the same shall not adversely affect the stability of the roof or materially interfere with Tenant's operations at the Premises.

12.5 Floor Load.

Without City's prior written consent, which City shall not unreasonably withhold, condition or delay, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building; provided that it shall not be unreasonable for City to withhold consent to any such placement or installation if City's engineers are not satisfied that the improvements suggested by Tenant are sufficient to support such placement or installation and not cause damage to the Building. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with the constructions provisions of this Lease, as necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

12.6 Antennae and Telecommunications Dishes.

Except as set forth in approved plans as part of the Initial Improvements, no antennae or telecommunications dish or other similar facilities may be installed on the roof or exterior of the Premises without the prior written approval of the City Administrator, which approval shall not be unreasonably withheld, conditioned or delayed. Any wireless telecommunications systems shall be subject to City's approval pursuant to City's policies on the siting and requirements for wireless telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with City's plans for solar panels or wind turbines on the roof of the Building or City's emergency communications and transmission facilities (if any) and, to the extent existing at the time approval to the same was requested, City's non-emergency communications and transmission facilities of City (if any).

Section 13 **DAMAGE OR DESTRUCTION**

13.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

13.2 Rent after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Initial Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 13.3 [Restoration Obligations] or Section 13.4 [Major Damage and Destruction or Uninsured Casualty]. In the event of any damage or destruction to the Premises, Tenant shall continue to pay to City all Rent, subject to the abatement provisions in this Section 13, until Tenant or City terminates this Lease pursuant to Section 13.3 or Section 13.4 below.

13.3 Restoration Obligations.

(a) City's Obligations. If the roof, foundation, exterior walls, interior load bearing walls or other structural elements of the Building are damaged or destroyed, then City shall repair the same provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "**Repair Period**"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises. City shall notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period or if the funds for such repairs are not appropriated by City's Board of Supervisors, City shall have the option to notify Tenant of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent shall be reduced as provided herein so long as City diligently prosecutes such repairs to completion subject to Force Majeure; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. If funds for such repairs are not appropriated by City's Board of Supervisors, then City shall be deemed to have elected option (b) of the preceding sentence. In case of termination, the Base Rent shall be reduced as provided above. In the event of a termination of the Lease resulting from the decision of the City's Board of Supervisors not to appropriate funds for repairs under this Section, Tenant at its sole discretion may elect, by written notice to Landlord given within thirty (30) days of receipt of City's notice that such funds have not been appropriated, to pay for such repairs in which event this Lease shall not terminate and shall continue in full force and effect with Tenant assuming the obligation to make the identified repairs.

In no event shall City be required to repair any damage to Tenant's Personal Property or any Improvements or alterations installed or made on the Premises by or at the expense of Tenant. Without limiting the foregoing, in the event the Premises or the Building is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Lease, City may terminate this Lease upon written notice to Tenant.

(i) Tenant's Obligations. If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 13.4 [Major Damage and Destruction or Uninsured Casualty] or for which City elects to terminate this Lease

under Section 13.3(a) [City's Obligations], then Tenant shall, subject to Section 13.4 hereof, within a reasonable period of time, commence and diligently, subject to Force Majeure, Restore the Premises (except for the roof and structural portions of the Building to be repaired by City in accordance with the terms of this Lease) to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws. During such restoration, Tenant shall be entitled to a proportionate reduction of Base Rent during the period of such repairs (but not to exceed one hundred eighty (180) days) based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises. Except as set forth below, all insurance proceeds received by Tenant for the repair or rebuilding of the Premises shall be used by Tenant for the repair or rebuilding of the Premises. All restoration performed by Tenant shall be in accordance with the procedures set forth in Section 10 [Subsequent Construction; Enhanced Improvements] and shall be at Tenant's sole expense.

13.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term and City does not terminate this Lease as provided above, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (1) electing to commence and complete Restoration of the Premises to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law and in accordance with any restoration work to be performed by City in accordance with the terms of this Lease; or (2) electing to terminate this Lease (subject to Section 13.4(b) [Condition to Termination; Payment of Insurance Proceeds]). Tenant shall provide City with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 10 [Subsequent Construction; Enhanced Improvements] that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction. During such restoration, Tenant shall be entitled to a proportionate reduction of Base Rent during the period of such repairs (but not to exceed two hundred ten (210) days) based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

(b) Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 13.4(a) [Tenant's Election to Restore or Terminate] above, Tenant, in its election to terminate described in Section 13.4(a), shall state the estimated cost of Restoration of the Premises, and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable. Upon receipt by Tenant of any insurance proceeds paid on account of such casualty for the repair or rebuilding of the Premises, Tenant shall promptly pay or cause to be paid to City such insurance proceeds recoverable by Tenant after first reimbursing Tenant the costs incurred by Tenant of constructing the Initial Improvements. Upon such event, Tenant shall provide to City a statement of such costs and the remaining debt, certified as true and correct, together with appropriate backup documentation.

13.5 Effect of Termination.

If Tenant elects to terminate the Lease under Section 13.4(a) [Tenant's Election to Restore or Terminate] above, then this Lease shall terminate on the date that Tenant shall have fully complied with all provisions of the first sentence of Section 13.4(b) [Condition to Termination; Payment of Insurance Proceeds]. Upon such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

13.6 Distribution Upon Lease Termination.

If Tenant is obligated to restore the Premises as provided herein and the Lease is terminated as a result of an Event of Default by Tenant, then at the time of termination Tenant shall transfer to City all remaining insurance proceeds for the repair or rebuilding of the Premises, or the right to such proceeds if not yet received, in order to allow City to complete the restoration of the Premises.

Section 14 **CONDEMNATION**

14.1 Definitions.

(a) **"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) **"Date of Taking"** means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, or (ii) the date on which Tenant is dispossessed.

(c) **"Award"** means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(d) **"Improvements Pertaining to the Realty"** means machinery or equipment installed for use on the Premises that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation, but excluding all of Tenant's Personal Property. In determining whether particular property can be removed "without a substantial economic loss," the value of the property in place considered as part of the realty should be compared with its value if it were removed and sold.

14.2 General.

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in

part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

14.3 Total Taking; Automatic Termination.

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

14.4 Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, and (B) Tenant elects to terminate; or (ii) if there is a partial Taking of a substantial portion of the Premises, then City shall have the right to terminate this Lease in its entirety; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Participation Rent, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) Either party electing to terminate under the provisions of this Section shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

14.5 Rent; Award.

Upon termination of this Lease pursuant to an election under Section 14.4 [Partial Taking; Election to Terminate] above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 14.6 [Partial Taking; Continuation of Lease] below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for Tenant's interest in the cost of the Initial Improvements and any Subsequent Construction to the extent Tenant has not previously recovered such cost from revenues generated from the Premises, and for compensation for the loss of its interest in the Premises, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.6 Partial Taking; Continuation of Lease.

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 14.4 [Partial Taking; Election to Terminate] above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be equitably reduced by an amount that Tenant's use and operation of the Building is affected (the "Base Rent Reduction"), as agreed to by the parties or, if the parties cannot so agree, then as determined by arbitration as set forth below, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall

have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's interest in the cost of the Initial Improvements and any Subsequent Construction to the extent Tenant has not previously recovered such cost from revenues generated from the Premises, Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.7 Temporary Takings.

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the Tenant's use or occupancy of the Premises during the applicable Taking and City shall be entitled to receive that portion of the Award representing compensation for City's use or occupancy of the Premises during the applicable Taking.

14.8 Arbitration of Disputes Relating to Rent Reduction.

In the event the parties cannot mutually agree upon the Base Rent Reduction from a partial Taking in which this Lease is not terminated, such disputed amount shall be determined in the manner provided in this Section 14.8. Either party may invoke the provisions of this Section at any time after negotiating in good faith for a period of not less than thirty (30) days, by delivering written notice to the other party.

(a) Appointment. Each party shall appoint one (1) appraiser within thirty (30) days after the notification invoking the arbitration process. Upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate in the City and County of San Francisco.

(b) Appraisal Instructions. Each appraiser will make an independent determination of the Base Rent Reduction. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Base Rent Reduction. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions

to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Base Rent Reduction to the parties within thirty (30) days after the appointment of the last of such appraisers. If the higher appraised Base Rent Reduction is not more than one hundred ten percent (110%) of the lower appraised Base Rent Reduction, then the Base Rent Reduction shall be the average of such two (2) Base Rent Reduction figures.

(i) "Baseball" Appraisal. If the higher appraised Base Rent Reduction is more than one hundred ten percent (110%) of the lower appraised Base Rent Reduction, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to subsection (i) above, and shall also have experience acting as a third appraiser of disputes involving commercial real estate or real estate development opportunities, including ground leases and rental valuation. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal set forth in this Lease. Either party may, by written notice to the other party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to the American Arbitration Association ("AAA") for appointment in accordance with the AAA rules and procedures for appointment of an independent third appraiser meeting the foregoing qualifications.

Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other party and the appraiser such party selected, at the same time it submits the same to the third appraiser. Neither party, and neither of the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Base Rent Reduction determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the appropriate Base Rent Reduction. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the appropriate Base Rent Reduction. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(ii) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Base Rent Reduction by the accepted appraisal shall be conclusive, final and binding on the parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers (but not the third appraiser) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

(iii) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the appraiser it selects and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser, if any, shall be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section. Until the date the Base Rent Reduction is finally determined under the process outlined above, then Tenant shall pay the Base Rent Reduction determined by City. Upon the date of final determination, City shall refund any excess amount to Tenant or Tenant shall pay any shortage to City, as the case may be. No such delay in the determination of Base Rent Reduction shall be deemed to constitute a waiver by either party of the adjustment of Base Rent Reduction as provided in this Section.

Section 15 **LIENS AND LEASEHOLD MORTGAGES**

15.1 Liens.

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within thirty (30) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, Attorneys' Fees and Costs) shall be payable to City by Tenant upon demand. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building, from mechanics' and materialmen's liens. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

15.2 Encumbrance of Landlord's Fee Interest.

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the rights of Tenant under the Lease shall not be affected or disturbed by any such sale or encumbrance, or by the exercise of any rights or remedies by any

purchaser or mortgagee arising out of any instrument reflecting such sale or encumbrance so long as no Event of Default is outstanding hereunder. Tenant shall not under any circumstances whatsoever Encumber in any manner the City's interest in the Premises, the Building, the Improvements, or the Lease. City shall not subordinate its interests, nor its right to receive Rent, to any Mortgagee of Tenant.

15.3 Leasehold Encumbrances.

(a) Tenant's Right to Mortgage Leasehold. Except as expressly permitted in this Section 15.3, Tenant shall not Encumber Tenant's leasehold interest in the Premises, the Building, the Improvements or the Lease. Any Mortgage that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section 15.3, Tenant shall have the right to Encumber Tenant's leasehold estate created by this Lease by way of a leasehold Mortgage; provided that, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease. Tenant shall promptly notify City of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

(b) Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one Mortgagee at any one time. If at any time there is more than one Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Section 15 to the exclusion of the holder of any junior Mortgage.

(i) No Invalidation of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease.

(ii) Purpose of Mortgage; Protections Limited to Permitted Mortgagees. A Mortgage may be given only to a Bona Fide Institutional Lender, or to any other lender approved by City in its sole discretion. A Mortgage shall be made only to finance the Initial Improvements and any Subsequent Construction, or for the purpose of refinancing a permitted Mortgage, and shall not be cross-collateralized or cross defaulted with any other debt of Tenant or any other party. Tenant shall not be permitted to refinance a permitted Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Tenant other than those created under this Lease. Notwithstanding the foregoing, Tenant shall have the right to place a Mortgage on Tenant's interest in the Premises in connection with a corporate reorganization or the sale of all or substantially all assets or other securitized

financings relative to multiple properties owned or leased by Tenant and its members, provided that: (i) Tenant shall not be permitted to create any structure that would directly or indirectly be, or be perceived to be in City's reasonable judgment, an obligation or security of City, (ii) the Cross-Collateralized Debt Leverage Ratio at the time of entering into such Mortgage is less than or equal to eighty percent (80%), (iii) Tenant notifies City of the cross-collateralized debt transaction not less than sixty days prior to closing and provides information reasonably requested by City regarding the proposed transaction and the Cross-Collateralized Debt Leverage Ratio, and (iv) City consents to the cross-collateralized debt transaction for purposes of verifying that the above requirements have been satisfied, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of the foregoing, the term "**Cross-Collateralized Debt Leverage Ratio**" shall mean the quotient, expressed as a percentage, of (A) the principal outstanding balance of the cross-collateralized debt at the time any such Mortgage is entered into, divided by (B) the fair market value of all properties (including, without limitation, the Tenant's interest in the Premises) securing such cross-collateralized debt at the time the Mortgage is recorded.

(iii) Rights Subject to Lease; Restoration Obligations. All rights acquired by the Mortgagee under a Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of the City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of the Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing. Except as set forth below, no Mortgagee shall be obligated to restore any damage to the Premises; provided, however, (i) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (ii) in the event that the Mortgagee obtains title to the leasehold and chooses not to complete or restore the improvements where Tenant otherwise has the obligation to so restore, it shall so notify City in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to restore the improvements as required under this Lease, but in any event the Mortgagee shall cause such sale to occur within six (6) months following the Mortgagee's written notice to City of its election not to restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to restore the improvements to the extent Tenant is required under this Lease to so restore.

(iv) Required Notice Provision in Mortgage. Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to City of the occurrence of any event of default under the Mortgage; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

15.4 Notices to Mortgagee.

(a) Copies of Notices. Subject to subsection (b) below, City shall give a copy of each default notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, to a Mortgagee that has given to City written notice substantially in the form

provided in subsection (b). Copies of such notices shall be given to the Mortgagee at the same time as notices are given to Tenant by City, addressed to the Mortgagee at the address last furnished to City. City's delay or failure to give such notice to the Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee to cure any default by Tenant. Any such notices to Mortgagee shall be given in the same manner as provided in Section 28 [Notices] below.

(i) Notice From Mortgagee to City. The Mortgagee shall be entitled to receive notices from time to time given to Tenant by City under this Lease in accordance with subsection (a) above, provided such Mortgagee shall have delivered a notice to City in substantially the following form:

"The undersigned does hereby certify that it is the Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, as landlord, and _____, as tenant (the "Lease"), of Tenant's interest in the Lease of the premises known as the Bill Graham Civic Auditorium, a legal description of which is attached hereto as Exhibit A. The undersigned hereby requests that copies of any and all default notices from time to time given under the Lease by City to Tenant be sent to the undersigned at the following address: _____."

15.5 Mortgagee's Right to Cure.

If Tenant shall enter into a Mortgage in compliance with the provisions of this Lease, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. In the case of any notice of default given by City to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied plus an additional fifteen (15) days thereafter for a monetary default or an additional thirty (30) days thereafter for a nonmonetary default, and City shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant within the applicable cure periods under the Lease.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified City of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than six (6) months thereafter. A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the

extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) the Mortgagee shall agree with City in writing to comply during the period City forebears from terminating this Lease with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Mortgagee. Notwithstanding anything to the contrary, the Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are reasonably susceptible of being performed by the Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Mortgagee is not reasonable capable of performing an obligation under this Lease, such obligations shall apply to and remain effective on a prospective basis to any assignee or transferee of the Mortgagee notwithstanding Mortgagee's inability to perform. Notwithstanding anything to the contrary above, if the Premises are not used by Tenant or Mortgagee or a designee of Mortgagee as required in Section 7 above and such non-use continues for a period of twelve (12) months, then City shall have the right to terminate this Lease by providing thirty (30) days notice of termination, subject to Tenant's and/or Mortgagee's right to cure by commencing concert operations during the thirty (30) day period and continuing thereafter in accordance with Section 7.

(c) Construction. Subject to subsection (b) above, if an Event of Default occurs following any damage but prior to restoration of the improvements, the Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the improvements beyond the extent necessary to preserve or protect the improvements or construction already made, unless the Mortgagee expressly assumes Tenant's obligations to City by written agreement reasonably satisfactory to City, to restore, in the manner provided in this Lease, the improvements. Upon assuming Tenant's obligations to restore, the Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the restoration to the date of such assumption.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, except as a result of damage or destruction to the Premises as in Section 13 or a Taking as set forth in Section 14, City shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. The Mortgagee shall thereupon have the option to

obtain a New Lease (a "New Lease") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the Mortgagee within such period or its designee, subject to the provisions set forth in this Section and provided that the Mortgagee assumes all of Tenant's obligations under any subleases or contracts affecting the Premises then in effect; and

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). Such New Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. Effective upon the commencement of the term of any New Lease, any sublease or contract then in effect shall be assigned and transferred to Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 15 may be exercised by or through its nominee or designee (other than Tenant) which is an affiliate of the Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that the Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of the Mortgagee.

(f) Limited to Permitted Mortgagees. Notwithstanding anything herein to the contrary, the provisions of this Section 15 shall inure only to the benefit of the holder of a Mortgage which is permitted hereunder.

(g) Consent of Mortgagee. No material modification, termination or cancellation of this Lease (herein, a "change") shall be effective as against a permitted Mortgagee unless a copy of the proposed change shall have been delivered to the Mortgagee and such Mortgagee shall have either (i) approved the change in writing or (ii) failed to either approve or disapprove the change in writing within thirty (30) days after delivery of a copy thereof to the Mortgagee, together with a request for the Mortgagee's approval of same.

(h) Limitation on Liability of Mortgagee. No Mortgagee shall be liable to perform Tenant's obligations under this Lease unless and until the Mortgagee acquires Tenant's rights under this Lease.

15.6 Assignment by Mortgagee

The foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate

hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Mortgagee's or transferee's right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Section 17 [Assignment & Subletting].

15.7 Transfer of Mortgage.

City hereby consents to the transfer of a Mortgage, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer, the new holder of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

15.8 Memorandum of Lease.

In the event the recordation of a memorandum of this Lease (a "**Memorandum of Lease**") is necessary in connection with a Mortgage permitted under this Lease, Tenant shall have the right to at its sole cost to record a Memorandum of Lease confirming the existence of this Lease, and commencement and expiration dates and option dates, and referencing the actual Lease for all other provisions. In such event, the City agrees to prepare, execute and acknowledge such Memorandum of Lease in recordable form, and deliver the Memorandum of Lease to Tenant for Tenant's execution and recordation at Tenant's cost. If such a Memorandum of Lease is recorded, then upon expiration or earlier termination of this Lease, Tenant agrees promptly to execute, acknowledge and deliver to City, upon written request by City, a termination of such Memorandum of Lease in such form as City may reasonably request, for the purpose of terminating any continuing effect of the previously recorded Memorandum of Lease as a cloud upon title to the Premises, and Tenant shall indemnify, defend and hold harmless City from and against any and all claims, demands, liabilities, actions, losses, costs and expenses, including (but not limited to) reasonable attorneys' fees, arising out of or in connection with Tenant's failure to so promptly execute such termination of Memorandum of Lease.

Section 16 **SECURITY DEPOSIT**

16.1 Deposit.

Upon execution of this Lease, Tenant shall deposit with City the sum specified as the security deposit in the Basic Lease Information (the "**Security Deposit**"), in cash, to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Tenant waives any restriction on the use or application of the Security Deposit by City as set forth in California Civil Code Section 1950.7 or any similar law, statute or ordinance now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate City for any other foreseeable or unforeseeable loss

or damage caused by the acts or omissions of Tenant, its Agents or Invitees. While City may take and hold for its account the Security Deposit upon a breach or default by Tenant or if City reasonably determines that its interest in the Security Deposit may be threatened or impaired, City shall not expend any of the Security Deposit on curative action or demand replenishment of the Security Deposit unless and until any notice and cure periods have transpired and the default thereby has become an Event of Default. Without limiting the foregoing, Tenant understands and agrees that City may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default. Upon the expiration or earlier termination of the Lease, City shall return to Tenant the Security Deposit less any portion thereof applied by City in accordance with this Section 16.1 or otherwise required to cure any existing defaults of Tenant.

16.2 Replacement.

Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount. At the start of the fifth (5th) Lease Year and each 5th anniversary thereafter, Tenant shall increase the amount of the Security Deposit by twelve and one-half percent (12.5%). City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

16.3 Alternative Forms of Security.

In lieu of cash security as provided above, Tenant may deliver to City an unconditional, irrevocable standby letter of credit in a form reasonably approved by the City Attorney and the City Administrator. The letter of credit shall be issued by a bank with a Moody's rating of A or better (or comparable successor rating). The issuing bank must have a branch office in San Francisco at which demands on the letter of credit may be presented. The original term of the letter of credit shall be no less than one year. Tenant shall keep such letter of credit, at its expense, in full force and effect until the sixtieth (60th) day after the expiration of the Term or other termination of this Lease, to ensure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof. In the event of any nonextension of the letter of credit, Tenant shall replace such security with a cash Security Deposit or another letter of credit permitted under this Section at least ten (10) days before expiration of such letter of credit. If Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit and to hold the funds so obtained as the Security Deposit required under this Section. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required under this Section.

16.4 Assignment of Rents.

Tenant hereby assigns to City, as security for Tenant's performance of its obligations under this Lease, all of Tenant's right, title and interest in and to all rents and fees due or to become due from any present or future subtenant, licensee, concessionaire, or other person occupying or providing services or goods on or to the Premises, but such assignment shall be subject to the right of Tenant to collect such rents until the date of any default hereunder. City shall apply amount collected hereunder to the Rent due under this Lease.

Section 17 **ASSIGNMENT AND SUBLETTING**

17.1 Assignments and Subleases.

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, Assign any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder, or Sublease any portion of the Premises, without City's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed by City after completion of the Initial Improvements, but may be withheld by City in its sole and absolute discretion before completion of the Initial Improvements. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to (a) Another Planet Entertainment, LLC, or any business directly or indirectly owned or controlled by, or under common ownership or control with, Another Planet Entertainment, LLC, (b) a successor corporation to Tenant by merger or consolidation, or (c) a purchaser of substantially all of the assets or outstanding equity of Another Planet Entertainment LLC (each, "**Permitted Successor**"), without City's consent; provided, (i) Tenant shall provide to City notice of any such Assignment or Sublet to a Permitted Successor as well as any requested backup information or documentation to verify the ownership and control of the Permitted Successor, (ii) the Permitted Successor, or one or two guarantors acceptable to City in its reasonable discretion (each such guarantor giving a guaranty in the form attached hereto as *Exhibit E*), have a net worth, determined in accordance with generally accepted accounting principles, of not less than Five Million Dollars (\$5,000,000); provided the value of this Lease shall not be included in any such net worth calculation, and (iii) the requirements set forth in clauses (a) through (c), (e) and (f) of Section 17.2 [Conditions to Assignment or Sublet] are satisfied. At such time or times as City may reasonably request, Tenant must furnish City with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other persons have a beneficial interest in Tenant, their names and the extent of such interest.

17.2 Conditions to Assignment or Sublet.

Any Assignment or Sublet of this Lease is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(a) any assignee, by instrument in writing reasonably approved by the City Administrator (in consultation with the City Attorney), for itself and its successors and assigns, and expressly for the benefit of City, must agree to be subject to all of the conditions and restrictions to which Tenant is subject and must expressly assume all of the obligations of Tenant under this Lease, and any subtenant, by instrument in writing reasonably approved by the City Administrator (in consultation with the City Attorney) must agree to be subject to all of the applicable conditions and restrictions of this Lease as they relate to the subtenancy. It is the intent of this Lease, to the fullest extent permitted by Law and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the

construction of the Improvements that City would have had, had there been no such transfer or change;

(b) all instruments and other legal documents involved in effecting the transfer shall have been submitted to City for review, including the agreement of sale, transfer, sublease or equivalent, and City shall have approved such documents;

(c) there shall be no Event of Default on the part of Tenant under this Lease;

(d) the proposed transferee (i) has the qualifications and has demonstrated to City's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, and (ii) is subject to the jurisdiction of the courts of the State of California;

(e) the proposed transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion; and

(f) Tenant agrees and understands that the intent and purpose of this Lease is for the uses as described in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant over and above the Rent charged to Tenant by City (less the actual, reasonable costs incurred by Tenant in connection with such assignment or sublease, including reasonable attorneys fees but excluding any brokers commissions) shall be paid directly to City with no profit, direct or indirect, to Tenant, except to the extent (i) such payment is properly attributable to the remaining value of Tenant's interest in the Initial Improvements (such value shall be fully amortized over a fifteen (15) year period starting on the Rent Commencement Date, using a straight-line amortization with interest accruing during that period at ten percent (10%) per annum), and (ii) otherwise expressly agreed to by City in writing at the time of any Assignment or Sublet (including but not limited to any rent adjustment agreed to in connection with the addition of a cafe or restaurant, as set forth in Section 3.1(b) above). This subsection (f) shall not apply with respect to the consideration paid for Tenant's or a Tenant's members' sale of its entire business as a going concern except to the extent a portion of that consideration is reasonably attributable to the sale of its interest in this Lease, as determined in accordance with generally accepted accounting principles.

17.3 License, Advertising and Concession Agreements.

City acknowledges and agrees that Tenant may enter into license and concession agreements for the use of space within the Premises and advertising agreements relative to the interior of the Premises in connection with Tenant's operations, and such agreements shall not be deemed an Assignment or Sublease and shall be permitted without City's review or approval. However, all such license, concession or advertising agreements shall be subject and subordinate to the terms and provisions of this Lease, and where the same is in writing, shall include a waiver and release of any and all claims against City relative to the Premises. Tenant shall Indemnify City and the Indemnified Parties for any and all Losses arising out of or relating to any license or concession agreement entered into by Tenant relative to the Premises, except to the extent such Losses result from the negligence or willful misconduct of City or its Agents.

17.4 Effect of Sublease or Assignment.

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease, unless City expressly agrees to a release in writing in connection with a City consent to an Assignment and then only to the extent set forth in such release. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, upon the occurrence and during the continuance of an Event of Default in the event of default by any transferee or successor of Tenant in the performance or observance of any of the terms of this Lease, City may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor except to the extent City has released Tenant in writing at the time of City's consent to such transferee or successor.

17.5 Assumption by Assignee.

Each Assignee shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Participation Rent, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Assignee satisfactory in form and substance to City. However, the failure or refusal of such Assignee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above.

17.6 Indemnity for Relocation Benefits.

Without limiting Section 17.5 [Assumption by Assignee] above, Tenant shall cause every Assignee and Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Assignee or Subtenant.

17.7 Nondisturbance.

Upon Tenant's request, City shall execute City's standard sublease consent form, including non-disturbance language and any additional provisions as may be agreed to by the parties, with respect to any Sublease approved by City hereunder.

17.8 Substitution and Release.

In the event of a permitted assignment of this Lease to an assignee with a net worth of not less than Five Million Dollars (\$5,000,000) or to an assignee with one or two guaranties acceptable to the City in its reasonable discretion from guarantors with a net worth of not less than Five Million Dollars (\$5,000,000) then Tenant shall be released from its obligations and liabilities under this Lease that arise and accrue from and after the date of the assignment, but not from any obligations that relate to the period before the date of the assignment. If City disputes whether Tenant is entitled to be released under this Section 17.8, Tenant shall be released only if

in fact it is determined by a court of competent jurisdiction that the conditions set forth for such release in this Section 17.8 were met.

Section 18 **INDEMNIFICATION OF CITY**

18.1 Indemnification of City.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in or on the Premises or any part thereof, except to the extent caused by City or its Agents; (ii) any accident, injury to or death of persons or loss or damage to property occurring in or on the Premises which is caused directly or indirectly by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof or near or around the Premises by Tenant or any of its Assignees, Subtenants, Agents or Invitees, (iv) any matter relating to the condition of the Premises caused by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (v) any failure on the part of Tenant or its Agents, Assignees or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits as required under this Lease (subject to any express written release by City in connection with an Assignment, as set forth above); (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Assignees, Subtenants, Agents or Invitees; and (vii) any legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use and occupancy of the Premises or Tenant's operations at the Premises; except in each case to the extent caused by the negligence or willful misconduct of City, City or any of its Agents or a breach of City's obligations under this Lease and except to the extent City is required to Indemnify Tenant for the same under this Lease.

18.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 18.1 [Indemnification of City] or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding within a reasonable time of such Indemnified Party obtaining notice of such claim, or obtaining facts sufficient to constitute inquiry notice for a reasonable person, and thereafter shall cooperate in good faith with Tenant in the defense of such claim at no cost to City or such Indemnified Party. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

18.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under this Lease.

18.4 Survival.

Tenant's obligations under this Section and any other Indemnification in this Lease shall survive the expiration or sooner termination of this Lease. All such Indemnifications are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City in this Lease, at common law or otherwise.

18.5 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Tenant's own choice (so long as such counsel is reasonably satisfactory to City); provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging and describing in reasonable detail the nature of such failure, to take reasonable and appropriate action to defend such suit or claim, City shall have the right promptly to use City Attorney or to hire outside counsel to carry out such defense, at Tenant's sole expense, which expense shall be due and payable to City within thirty (30) days after receipt by the Tenant of an invoice therefore.

18.6 Release of Claims and Losses Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against City and the other Indemnified Parties from any Losses including damages to or loss of goods, wares, goodwill, merchandise, business opportunities, and equipment and by persons in, upon or about the Premises for any cause arising at any time including, without limitation, all claims arising from any joint or concurrent negligence of City or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of City or other Indemnified Parties or breach of the City's obligations under the Lease or claims for which City has otherwise agreed to indemnify Tenant hereunder, and further excluding any claims, demands, or causes of action Tenant may now or hereafter have against City for rights of contribution or equitable indemnity under applicable Laws.

18.7 City Indemnification.

City shall Indemnify Tenant from and against, all Losses resulting from (i) the negligence or willful misconduct of City or its Agents or invitees in the performance of City's obligations under this Lease or the enjoyment of City's rights under the Lease, (ii) any breach by City, following written notice and a reasonable cure period, of City's obligations under this Lease, and (iii) any property damage, excluding ordinary wear and tear, or personal injury occurring in or on the Premises or any part thereof caused by City or its agents or invitees or suffered by City or its agents or invitees during City Days (except to the extent such Losses result from the acts or negligence of Tenant or any of its Assignees, Subtenants, Agents or Invitees, or Tenant's failure to fulfill its obligations under this Lease).

Section 19 **INSURANCE**

19.1 Premises and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times (except as provided below) from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises, or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during construction and prior to completion of the Initial Improvements, and during any period of Subsequent Construction costing in excess of \$500,000 for any single project, Tenant shall maintain, on a form reasonably approved by City, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the Improvements, against "all risk" or "special form" hazards, including an additional insured City with any deductible (other than earthquake and flood) not to exceed Fifty Thousand And No/100 Dollars (\$50,000.00).

(ii) Premises Insurance; Earthquake and Flood Insurance. Upon Completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("**Causes of Loss - Special Form**", or its replacement), excluding earthquake and flood, in an amount not less than 100% of the then-current full replacement cost of the Initial Improvements and other property being insured pursuant thereto (including building code upgrade coverage), with any deductible (other than earthquake or flood) not to exceed Fifty Thousand And No/100 Dollars (\$50,000.00).

(iii) Commercial General Liability Insurance. Tenant shall maintain "**Commercial General Liability**" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93 (or its replacement), insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto occurring on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million And No/100 Dollars (\$10,000,000.00) each occurrence and annual aggregate, covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity obligations in Section 18.1 [Indemnification of City]), independent contractors, and products and completed operations coverage. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant shall maintain liquor liability coverage with limits not less than One Million And No/100 Dollars (\$1,000,000.00) per occurrence and annual aggregate.

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance in amounts required by Laws, and employer's liability coverage with limits not less than \$1,000,000 each accident, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) Boiler and Machinery Insurance. Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) Business Automobile Insurance. If Tenant or any Subtenant, operator or Agent use motor vehicles during their employment in connection with the Premises, Tenant shall maintain, and cause its Subtenants, operators and Agents (as applicable) to maintain, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with such person's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Premises Damage policy with limits of not less than One Million And No/100 Dollars (\$1,000,000) per accident.

(vii) Professional Liability. Tenant shall require all architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Improvements or any Subsequent Construction to maintain professional liability (errors and omissions) insurance, with limits not less than One Million And No/100 Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefore and a deductible of not more than Fifty Thousand Dollars (\$50,000) per claim.

(viii) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Tenant and is reasonably customary for concert and event venues in the San Francisco Bay Area.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-VI or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance covering the Initial Improvements and Subsequent Construction, shall name City as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS AND EMPLOYEES."

(iii) Shall be evaluated by City for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if, in the reasonable judgment of the City's Risk Manager, it is the prevailing commercial practice in the San Francisco Bay Area to carry insurance for facilities similar to the Premises in amounts greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises.

(iv) Shall provide that the insurer shall endeavor to provide thirty (30) days' prior written notice (ten (10) days' prior written notice for nonpayment of premiums) to

City of any cancellation, reduction or material modification, or termination of such insurance for any reason;

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vi) Each policy of property insurance required hereunder shall provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 19.1(a)(i), (ii), (iv) or (v);

(vii) Shall be subject to the reasonable approval of City;

(viii) If any of the liability insurance required to be carried by Tenant hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

(ix) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to City shall be payable notwithstanding any act or negligence of Tenant.

19.2 Certificates of Insurance; Right of City to Maintain Insurance.

Tenant shall furnish City certificates with respect to the policies required under this Section, together with copies of each such policy (if City so requests) and evidence of payment of premiums, within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least ten (10) business days after the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 19.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

19.3 Insurance of Others.

If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies name Tenant and City as additional insureds.

19.4 City Entitled to Participate.

City shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) covered by the insurance required to be carried hereunder, but only to the extent that its interest may appear.

19.5 City's Self Insurance.

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Premises or otherwise.

19.6 Release and Waiver.

Each party hereby waives all rights of recovery and causes of action, and releases each other party from any Losses occasioned to the property of each such party, which Losses are either of the type (a) that are covered under the property policies required by Sections 19.1(a)(i), (ii), (iv) or (v), or (b) that are covered under property insurance policies actually carried by such party, or (c) that would be covered under property insurance policies equivalent to those required to be carried by Tenant under this Lease if the party had carried such insurance.

Section 20 **HAZARDOUS MATERIALS**

20.1 Hazardous Materials Compliance.

(a) Compliance with Hazards Materials Laws. Tenant shall comply and use commercially reasonable efforts to cause (i) its Agents, (ii) its Subtenants or operators, and (iii) all of Tenant's Invitees entering upon the Premises (other than City and its Agents), to comply with all Hazardous Materials Laws and prudent business practices. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction and operation of the Initial Improvements, or any Subsequent Construction, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable laws, (D) janitorial supplies or materials in such limited amounts as are customarily used for such purposes so long as such Handling is at all times in full compliance with all Hazardous Material Laws; and (E) all food and food products and cleaning and other supplies which are customarily used in similar venues, so long as in each case such Handling is at all times in full compliance with all Hazardous Material Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 20.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws and all communication with any person relating to Hazardous Materials Claims.

(c) City's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld or delayed, a written remediation plan and the name of the proposed contractor which will perform the work. If City disapproves of any such remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises and the operations and use thereof. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (i) in compliance with all applicable Hazardous Materials Laws and the directives of applicable governmental authorities, and (ii) to the reasonable satisfaction of City. If and to the extent required, City shall sign a manifest indicating City ownership of any existing Hazardous Material removed from the Property by Tenant in connection with the construction of the Initial Improvements or any Subsequent Construction; provided, Tenant and its Agents shall be responsible for the proper Handling, transportation and disposal of the Hazardous Material and any failure to properly Handle, transport or dispose of such material shall be covered by the Hazardous Materials Indemnity set forth in Section 20.2 below.

(i) Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") that (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City Administrator an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

20.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 18.1 (except to the extent the same relates to Hazardous Materials), Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, any Subtenant, Agent or Invitee of Tenant (but excluding City, its Agents or Invitees) directly or indirectly arising out of (a) the Handling, transportation or Release of Hazardous Materials by Tenant, or its Subtenants, Agents or Invitees, (b) any failure by Tenant or its Subtenants, Agents or Invitees to comply with Hazardous Materials Laws in connection with their use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in, on or about the Premises at any time during the Term of the Lease and before their surrender of the Premises; or (c) any failure by Tenant to comply with the obligations contained in Section 20.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified

Parties shall arise upon the earlier to occur of (i) discovery of any such Hazardous Materials on, under or about the Premises or the discovery of the disturbance or exacerbation of the pre-existing condition; or (ii) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

Notwithstanding anything to the contrary in the Lease, Tenant shall not be liable under the Lease with respect to any Hazardous Materials located in, on or under the Premises as of the Effective Date of this Lease (“**Pre-Existing Hazardous Material**”) except for liability resulting from the disturbance or exacerbation of Pre-Existing Hazardous Material by Tenant, its Subtenants, or Agents, including but not limited to any disturbance or exacerbation by Tenant in connection with the Initial Improvements or any Subsequent Construction. City shall comply with all Hazardous Material Laws with respect to all Pre-Existing Hazardous Material except for any compliance that is required or triggered as a result of any act of Tenant, its Subtenants, or Agents, including but not limited to the construction of the Initial Improvements or any Subsequent Construction, or any disturbance or exacerbation of the Existing Hazardous Material.

20.3 Hazardous Substance Disclosure.

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises, which are described in due diligence materials which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

Section 21 **EVENTS OF DEFAULT; TERMINATION**

21.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an “**Event of Default**” under the terms of this Lease:

(a) Tenant fails to pay any Rent to City when due, which failure continues for ten (10) days following written notice from City; provided, however, City shall not be required to give such notice on more than three (3) times during any Lease Year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;

(b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(c) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred sixty (60) days;

(d) Tenant makes a general assignment for the benefit of its creditors;

(e) Tenant abandons or vacates the Premises;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from City of such failure;

(g) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an Assignment, Sublease or other transfer of this Lease or any interest therein to occur in violation of this Lease, which event is not cured by Tenant within thirty (30) days after written demand by City by an effective rescission of the Assignment, Sublease or transfer; or

(ii) Tenant engages in or allows any use not permitted hereunder which event is not cured by Tenant within ten (10) days after written demand by City.

Section 22 **REMEDIES**

22.1 City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease, City shall have all rights and remedies provided in this Lease or available at law or equity that are not otherwise specifically waived or limited pursuant to the terms of this Lease. All of City's rights and remedies granted pursuant to this Lease shall be cumulative, and except as may be otherwise provided by applicable Law or specifically limited pursuant to this Lease, the exercise of any one or more rights shall not preclude the exercise of any others.

22.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect pursuant to Civil Code Section 1951.4.

(b) No Termination. No act by City allowed by this Section 22.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. In the event of any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, Attorneys' Fees and Costs, and expenses of removal of Tenant's Personal Property, trade fixtures and alterations; (ii) second, to the payment of Rent then due and payable hereunder; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to

pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

22.3 Right to Perform Tenant's Covenants.

City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City under this Lease, if at any time Tenant fails to pay any sums required to be paid by Tenant pursuant to this Lease to any person other than City, or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following any applicable cure period specified above, then City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

22.4 Right to Terminate Lease.

(a) Damages. City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following: (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award" shall be computed by allowing interest at a rate per annum equal to the Default Rate; provided, however, for purposes of subclause (iii) above only, "the worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises, and if such termination is contested by Tenant and City successfully prevails, and in any appeal thereof, Tenant hereby waives any rights to recover

or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Transfer or Sublet. Upon the occurrence and continuation of an Event of Default, notwithstanding Section 17, Tenant shall have no right to Assign or Sublease the Premises in whole or in part without City's written consent, which may be given or withheld in City's sole and absolute discretion.

22.5 Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief, an order for specific performance (but not specific performance in connection with Tenant's obligation to continue to occupy and operate the Premises; provided that the foregoing shall not limit the City's rights under Section 22.2 above), or any other equitable relief, where appropriate to the circumstances of such default.

22.6 Continuation of Subleases and Agreements.

If this Lease is terminated prior to the expiration thereof, and subject to any non disturbance agreements entered into by City pursuant to the terms of this Agreement, City shall have the right, at its sole option, to assume any and all agreements by Tenant for the maintenance or operation of the Premises, to the extent assignable by Tenant. Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing agreements then in force, as above specified, but only to the extent assignable by Tenant.

Section 23 **NO WAIVER**

23.1 No Waiver.

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No failure by City to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

23.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in

writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

Section 24 ESTOPPEL CERTIFICATES.

24.1 Tenant Certificate.

Tenant shall execute, acknowledge and deliver to City, within fifteen (15) days after a request, a certificate stating to Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, (d) Tenant is not aware of any defaults by City, and (e) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and Tenant shall attach such copy to the certificate). Any such certificate may be relied upon by City or any successor agency, any successor agency, and any prospective purchaser or mortgagee of City's interest in the Premises or any part thereof. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into every Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within twenty (20) business days after request, an estoppel certificate covering the matters described above with respect to such Sublease.

24.2 City Certificate.

City shall execute, acknowledge and deliver to Tenant, within fifteen (15) days after a request, a certificate stating to City's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), and (d) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and City shall attach such copy to the certificate). Any such certificate may be relied upon by Tenant or an approved transferee of Tenant's interest under this Lease.

Section 25 APPROVALS BY CITY

25.1 Approvals by City.

Wherever this Lease requires or permits the giving by City of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City, the City Administrator, or his or her designee, shall be authorized to execute

such instrument on behalf of City, except as otherwise provided by applicable law, including City's Charter.

Section 26 **SURRENDER OF PREMISES**

26.1 Condition of Premises.

Upon the expiration or other termination of the Term of this Lease as may be permitted or may occur pursuant to any other provision of this Lease, Tenant shall quit and surrender to City the Premises, and all Improvements, repairs, alterations, additions, substitutions and replacements thereto, in good order and condition, but with reasonable wear and tear (consistent with Tenant's maintenance obligations under this Lease), casualty and condemnation, if applicable, excepted. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination. Upon expiration or termination of this Lease, Tenant its Agents shall have the right to remove their respective Personal Property and trade fixtures consistent with Section 11.13 [Title to Improvements], but any damage to the Improvements which is caused by their removal of same shall be repaired at Tenant's expense. At City's request, Tenant shall remove, at no cost to City, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by other persons).

26.2 Termination of Subleases.

Upon any termination of this Lease, any and all Subleases or other rights of parties acting by and through Tenant shall terminate without further action.

Section 27 **HOLD OVER**

27.1 Holdover Without Consent.

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis Base Rent equal to one hundred fifty percent (150%) of the latest monthly Base Rent payable by Tenant hereunder prior to such expiration, together with the Participation Rent payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease.

27.2 Holdover With Consent.

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred ten percent (110%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with Participation Rent payable under this Lease.

and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

Section 28 **NOTICES**

28.1 Notices.

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, at Tenant's address set forth in the Basic Lease Information; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given three (3) business days after the date when it is mailed if sent by first class or certified mail, one (1) business day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

Section 29 **CITY ENTRY**

29.1 City Entry.

Tenant shall permit City and its Agents to enter the Premises during regular business hours (and at any time in the event of an emergency) upon one (1) business days' prior notice (except in the event of an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that City may have a right to perform under this Lease, (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate, (iv) showing the Premises to prospective tenants or other interested parties during the last one hundred eighty (180) days of the Term, and to post notices of non-responsibility, or (v) accessing Room 202 at any time without notice and Brooks Hall upon at least one (10 business day's prior notice; provided, however, City agrees in performing or undertaking any of the foregoing activities to use reasonable efforts to minimize interference with the activities of Tenant. Such access shall be subject to Tenant's reasonable security and safety measures. Tenant shall provide City with a set of keys to all doors in the Premises, and shall provide replacement keys if and when any locks are changed. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City) shall be keyed to the Building master key system, and City shall at all times have a key with which to unlock all such doors.

29.2 City Reservations.

Notwithstanding anything to the contrary in this Lease, City reserves and retains the right to grant future easements, permits and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, including for the installation, operation, maintenance, and repair of equipment for cellular telephone, radio or other telecommunications services, provided that any such easement, permit or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, permit or right-of-way, and provided further that any such easement, permit or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder.

Section 30 **EMPLOYMENT**

30.1 Existing Employees.

On or before the Effective Date, Tenant shall have offered employment to the existing employees at the Bill Graham Civic Auditorium identified in *Exhibit D* (the "**Existing Employees**") on an "at will" basis and terms consistent with the current employment practices of Another Planet Entertainment, LLC at rates not less than the rates under such employees' existing employment arrangements, and with respect to the Existing Employees that wish to remain employed at the Premises, Tenant shall hire such employees immediately upon the Effective Date of this Lease (or as of the end of the Construction Period in the event Tenant has made separate arrangements with SMG for the continued employment of such Existing Employees with SMG during the Construction Period). Existing Employees will have a choice as to whether they wish to accept employment by Tenant or remain employees of SMG. If an Existing Employee chooses to remain an employee of SMG, then Tenant shall not be required to hire such Existing Employee. On or before the Effective Date and, if Tenant intends to employ one or more Existing Employees at the end of the Construction Period, then within ten (10) days following the end of the Construction Period, City and Tenant shall meet and confer on the employment status of each Existing Employee, and Tenant shall provide evidence, to the City Administrator's satisfaction, that the provisions of this Section have been satisfied. Any breach of this Section or of an employee agreement entered into pursuant to this Section shall, subject to the applicable notice and cure periods under the Lease, be a material breach of this Lease.

30.2 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Tenant agrees to comply with all applicable provisions of the First Source Hiring Ordinance and shall, upon City's request, enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

30.3 Wages and Working Conditions; Theatrical Services.

Pursuant to San Francisco Administrative Code Section 21.25-3, leases and agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include,

without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this agreement shall have the meanings provided in Section 21.25-3. Tenant and its Agents agree to comply with and be fully bound by, and to require its Subtenants to comply with and be fully bound by, the provisions of Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to City. The provisions of Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Section 21.25-3, including, without limitation, any investigation of noncompliance by a contractor or agent of Tenant. Tenant agrees that City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Tenant may obtain a copy of the current Prevailing Rate of Wages from City, including its Office of Labor Standards Enforcement. Tenant acknowledges that City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

30.4 Tenant Control; No Joint Venture.

Tenant shall have complete control over its employees in the method of performing their work under this Lease. Subject to the provisions of this Lease, Tenant retains the right to exercise full control and supervision of the services and full control of the employment, direction, compensation and discharge of all its employees and Tenant agrees to be solely responsible for all matters relating to its employees. All personnel employed by Tenant shall be employees of Tenant and not of City. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other person, or cause City to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither party acting as the Agent of the other party in any respect.

Section 31 **REPRESENTATIONS AND WARRANTIES OF TENANT**

31.1 Tenant Representations.

Tenant represents, warrants and covenants to City as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of Delaware. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of Delaware.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this

Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant or its members, and Tenant and its members have not received notice of the filing of any pending suit or proceedings which might materially adversely affect Tenant's ability to perform under this Lease.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by City and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant or its members under (A) any agreement, document or instrument to which Tenant or its members are a party or by which any of them is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its members or their businesses, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or its members, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to City in writing, neither Tenant nor any of its members (i) have knowledge of a material default under, or received notice asserting that it is in default under, any lease or management agreement or the like, (ii) have filed a petition for relief under any chapter of the U.S. Bankruptcy Code, and (iii) have suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

Section 32 **SPECIAL PROVISIONS**

32.1 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall

require all subtenants and other subcontractors to comply with such provisions, Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease subject to the applicable notice and cure periods under this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(i) HRC Form. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

(ii) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

32.2 MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

32.3 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of City, including the Premises and the Property. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any

cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

32.4 Conflict of Interest.

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City.

32.5 Drug-Free Workplace.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall, subject to applicable notice and cure periods under this Lease, be deemed a material breach of this Lease.

32.6 Waiver of Relocation Assistance Rights.

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.).

32.7 Public Records; Sunshine Ordinance.

Tenant understands and agrees that City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.) (together with any amendments, supplements and successor statutes and ordinances, are hereinafter referred to as the "Public Records Laws"), apply to this Lease, and any and all records, information, and materials submitted to City. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with Public Records Laws, subject to any exceptions or exemptions set forth in the Public Records Laws.

32.8 Requiring Health Benefits for Covered Employees.

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall, subject to applicable notice and cure periods under this Lease, constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(i) Tenant shall keep itself informed of the current requirements of the HCAO.

(ii) Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(iii) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(iv) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

32.9 Notification of Limitations on Contributions.

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer (or, if not a corporation, then the equivalent person that directs or participates in directing the affairs or actions of the entity); any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

32.10 Food Service Waste Reduction.

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

Section 33 **GENERAL**

33.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend; Holiday; Business Day. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 pm on the next business day. For

purposes of this Lease, a business day means any day except Saturday, Sunday, or a day on which City and County of San Francisco is closed for business.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

33.2 Interpretation of Agreement.

Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

33.3 Successors and Assigns.

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

33.4 Interpretation of Lease; Approvals.

Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Lease. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject

to applicable Law. Except as otherwise specifically provided in the Lease, whenever the Lease requires an approval or consent by either City (acting in its proprietary capacity) or Tenant, such approval or consent shall not be unreasonably withheld, and each party shall at all times act in good faith.

33.5 No Third party Beneficiaries.

This Lease is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

33.6 Real Estate Commissions.

City is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, real estate agent or finder in connection with this transaction. In the event any broker, real estate agent or finder makes a claim, the party through whom such claim is made agrees to Indemnify the other party from any Losses arising out of such claim.

33.7 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

33.8 Entire Agreement.

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

33.9 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

33.10 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

33.11 Extensions by City.

Upon the request of Tenant, City may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

33.12 Attorneys' Fees and Costs.

If either party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Attorneys' Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. The Attorneys' Fees shall be deemed an "actual pecuniary loss" within the meaning of Bankruptcy Code Section 365(b)(1)(B), and notwithstanding the foregoing, all Fees incurred by either party in any bankruptcy case filed by or against the other party, from and after the order for relief until this Lease is rejected or assumed in such bankruptcy case, will be "obligations of the debtor" as that phrase is used in Bankruptcy Code Section 365(d)(3).

33.13 Effective Date.

This Lease shall become effective on the date when each of the following has occurred (the "**Effective Date**"): (i) the parties have fully executed and delivered this Lease; (ii) Tenant has satisfied its obligations with respect to the Existing Employees as set forth in Section 30.1 [Existing Employees]; (iii) the MTA Executive Director has approved the parking provisions of this Lease; and (iv) the effective date of a Board of Supervisor resolution approving this Lease, which resolution shall be enacted if at all in the sole discretion of the Board of Supervisors and

Mayor. City shall notify Tenant of the Effective Date and the parties shall insert by hand the appropriate dates in the Basic Lease Information; provided failure of such notification or such handwritten insertion will not change the Effective Date or other dates or invalidate this Lease. Either party may rescind its offer to enter into this Lease at any time before the Effective Date.

33.14 Severability.

If any provision of this Lease, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease, in which case, the parties will negotiate in good faith a replacement provision which is not invalid to accomplish substantially the same intention as the provision held invalid.

33.15 Limitation on Liability.

No elective or appointive board, commission, member, officer, director, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement. No member, officer, director, employee or other Agent of Tenant shall be personally liable to City, its successors and assigns, in the event of any default or breach by Tenant or for any amount which may become due to City, its successors and assigns, or for any obligation of Tenant under this Agreement.

33.16 Guaranties.

Concurrently with Tenant's execution of this Lease, Another Planet Entertainment LLC, a Delaware limited liability company ("**Guarantor**") shall execute and deliver to the City a guaranty of Tenant's obligations under this Lease in the form attached to this Agreement as **Exhibit E** (the "**Guaranty**"). Tenant shall provide a replacement Guaranty if the Tangible Net Worth requirement, as set forth in Section 8.10 of the Guaranty, of Guarantor is not satisfied at any time or if the Guaranty is terminated during the Term. The Guaranty shall provide that the total payment obligations of the Guarantor thereunder shall be limited to the sum of Five Million Dollars (\$5,000,000) (the "**\$5 Million Cap**"). The Guaranty shall terminate on the earlier of (a) the date that is sixty (60) days following the expiration or earlier termination of the Lease, and (b) the date that Tenant assigns its interest in the Lease in accordance with Section 17.8 (provided Tenant meets the conditions for such release set forth in Section 17.8); provided in each case above the Guaranty shall continue with respect to (i) claims hereunder that relate to the period before such expiration, termination or assignment and release, and (ii) any indemnity or other obligation of Tenant under this Lease that survives any such termination, expiration or assignment and release by its terms.

Section 34 DEFINITION OF CERTAIN TERMS

If not defined elsewhere in this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Additional Rent means any and all sums (other than Base Rent and Participation Rent) that may become due or be payable by Tenant under this Lease.

Adjustment Date means the first day of Lease Year 2, and the first day of each Lease Year thereafter:

Agents means, when used with reference to either party to this Lease or any other person or party so designated, the members, officers, directors, commissioners, employees, agents, contractors and vendors of such party or other person, and their respective heirs, legal representatives, successors and assigns.

Assignments mean any assignment, encumbrance, pledge or otherwise transfer of any part of Tenant's interest in or rights with respect to the Premises or its leasehold estate hereunder.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Base Rent means the annual base rent specified in Section 2.2, payable by Tenant to City.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for another person: a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other person or persons which, at the time of a Mortgage is recorded, has (or is controlled by a person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged in the financial services business.

Books and Records as defined in Section 2.5.

Casualty Notice means if an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term and City does not terminate this Lease as provided hereinabove, then Tenant shall provide City with written notice of its election to commence and complete Restoration, or election to terminate this Lease.

Change Order means any change, addition or alteration to the Design Development Documents and Construction Documents relating to the design or specifications of the Initial Improvements anticipated to cost Ten Thousand Dollars (\$10,000).

City Days are those days used for civic events and other City purposes approved by the City Administrator pursuant to the procedures set forth in *Exhibit C* attached hereto.

Commencement Date is defined in the Basic Lease Information.

Competing Venue as defined in Section 1.3(g).

Completion means completion of construction of all or any applicable portion of the Improvements in accordance with the terms of the Lease.

Construction Documents means the final plans, specifications and working drawings for Improvements, setting forth in detail all aspects of the design, function and construction of the

Improvements in form sufficient for obtaining permits and bidding all elements of construction, and in otherwise in conformity with all of the requirements of this Lease.

Construction Interval as defined in the Basic Lease Information

Construction Period means the period described in Section 9.4.

Cost Statement as defined in Section 9.5.

CPI means that index published by the United States Department of Labor, Bureau of Labor Statistics known as "All Urban Consumers - All Items for the San Francisco-Oakland-San Jose, California (Base Years 1982-84 = 100)." If the CPI base year is changed, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

Cross-Collateralized Debt Leverage Ratio as defined in Section 15.3.

Default Rate means any unpaid amount shall bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act; provided, in no event shall the Default Rate exceed any applicable usury or similar Law.

Design Development Documents means the architectural, structural, mechanical, electrical, materials and such other elements as may be appropriate, together with fully developed floor plans and interior elevations.

Disabled Access Laws means the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities.

Effective Date as defined in Section 33.13.

Encumber means create any Mortgage.

Enhanced Improvements as defined in Section 10.1.

Event of Default is defined in Section 21.1.

Expiration Date as defined in the Basic Lease Information as the same may be extended.

Force Majeure means events (the existence of which was not known as of the date of the date this Lease was signed, or the date on which Subsequent Construction commences, as applicable) which result in delays in a party's performance of its obligations hereunder primarily due to causes beyond such party's control and not caused by the acts or omissions of the delayed party, such as acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; the presence of Hazardous Materials or other concealed conditions on the Premises that would substantially delay or materially and adversely impair the Tenant's ability to construct

on the Premises; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Premises; archeological finds on the Premises; strikes, delay in the granting of permits and other governmental approvals beyond reasonable time periods estimated under the Construction Schedule and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that the delayed party has ordered such materials on a timely basis and the Delayed Party is not otherwise at fault for such inability to obtain materials). Force Majeure does not include failure to obtain financing or have adequate funds, or any event that could have been avoided by exercising that standard of foresight and due diligence that any ordinary, prudent and competent person would exercise under the circumstances. In the event of the occurrence of any such delay, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, the delayed party shall have first notified the other party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) the delayed party cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay within the time period remaining prior to the applicable completion date. Under no circumstances shall an event of Force Majeure exceed twelve months without City's consent.

Guarantor or Guarantors as defined in Section 33.16.

Guaranty or Guaranties as defined in Section 33.16.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Sections 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids, and lead containing materials.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in the value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and Attorneys' Fees and Costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

Impositions means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the improvements or personal property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder.

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Initial Improvements.

Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies, employees and member and other subdivisions, including, without limitation, all of the Agents of City and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect, reimburse, defend and hold harmless.

Initial Improvements means the improvements shown on the Construction Documents approved by City as generally described on *Exhibit B* subject to further notification as agreed to by the City Administrator.

Initial Term means the period from the Commencement Date until the Expiration Date set forth in the Basic Lease Information, unless earlier terminated in accordance with the terms of this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the parties or to the Premises or any portion thereof, or to Tenant's use of the Premises, whether or not in the present contemplation of the parties.

Lease Year 1 means the period commencing on the Rent Commencement Date and expiring on December 31, 2010. Lease Year 2 means the period commencing on January 1,

2011 and continuing through and including December 31, 2011. Each subsequent 12-month period shall also be referred to as a Lease Year in sequential order (i.e., Lease Year 3, Lease Year 4, etc., as the case may be).

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, costs, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises (a) to the extent that the hard costs of Restoration will exceed One Million Dollars (\$1,000,000) or (b) which cannot reasonably be repaired within two hundred ten (210) days after the date of the damage.

Major Repair means a sudden or unexpected repair to or replacement of the plumbing, elevators, electrical wiring, or heating, ventilation or air conditioning systems in the Premises, not caused by Tenant's failure to maintain such item, the cost of which is reasonably estimated by Tenant's architect or engineer to cost in excess of Two Hundred Fifty Thousand Dollars (\$250,000).

Minor Alterations means (a) the installation, repair or replacement of interior furnishings, decorative improvements, wall coverings and other minor alterations to the Premises costing less than Two Hundred Fifty Thousand Dollars (\$250,000) and which do not affect the structural integrity of the Building, (b) recarpeting or repainting the interior of the Premises, and (c) any other Subsequent Construction that costing less than Two Hundred Fifty Thousand Dollars (\$250,000) and that does not require a building permit.

Mortgage means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Naming Rights means the right or opportunity to name the main auditorium of the Building, for use in advertising or promoting concerts or events therein, or to display a name or mark as the name or identification of the main auditorium of the Premises.

Net Naming Rights Revenue means the total amount of revenue, income and consideration, in cash or in the reasonable cash value to Tenant of any non-cash consideration, received by Tenant or its Affiliates or Agents from a third party in connection with the sale of Naming Rights, less (i) any and all direct third party expenses actually incurred by Tenant in the sale of such Naming Rights, including without limitation, fulfillment costs consistent with industry standards and (ii) all commission costs (both internal and third party) incurred by Tenant in the sale of such Naming Rights consistent with industry standards; provided such commission costs shall in no event exceed fifteen percent (15%).

Non-Ticketed Event as defined in Section 2.3.

Participation Rent means the percentage rent payable to City by Tenant as set forth in Section 2.3.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefore.

Performance Period means the period from the start of Lease Year 6 to the end of Lease Year 9.

Phase as defined in the Basic Lease Information

Phase 1 as defined in Section 9.1.

Phase 2 as defined in Section 9.1.

Phase 3 as defined in Section 9.1.

Phase 1 Improvements as defined in the Basic Lease Information

Phase 2 Improvements as defined in the Basic Lease Information

Phase 3 Improvements as defined in the Basic Lease Information

Phase 1 Construction Period as defined in the Basic Lease Information

Phase 2 Construction Period as defined in the Basic Lease Information

Phase 3 Construction Period as defined in the Basic Lease Information

Pre-Existing Hazardous Material as defined in Section 20.2.

Premises means the Building commonly known as the Bill Graham Civic Auditorium, located on property bordered by Grove, Hayes, Polk and Larkin Streets in San Francisco, California (Block 0812, Lot 001).

Qualified Event means an event at the Premises where the actual attendance at the event is greater than two thousand (2,000) persons for a publicly ticketed event or five hundred (500) persons for a Non-Ticketed Event.

Qualified Ticket means a ticket sold for a publicly-ticketed event at the Premises where the actual attendance at the event is greater than Two Thousand (2,000) individuals in turnstile attendance.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in

California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means the sum of Base Rent, Participation Rent and Additional Rent.

Rent Abatement Period as defined in Section 2.2.

Rent Commencement Date as defined in Section 2.2.

Rent Payment Date as defined in Section 2.2.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of a Taking, the restoration, replacement, or rebuilding of the Improvements to an architectural whole.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons).

Subsequent Construction as defined in Section 10.2.

Substantially Completed or Substantial Completion means the Initial Improvements shall be deemed to be Substantially Completed when Tenant's architect reasonably determines and certifies in writing to City that the Initial Improvements have been substantially completed in accordance with the Construction Documents to the extent necessary to enable Tenant to hold concerts and events at the Premises and to conduct its normal business operations therein without unreasonable impairment or interference, but subject to "punchlist" items, the completion of which will not unreasonably interfere with normal business operations therein. Tenant shall diligently pursue to completion all such details. Final completion shall occur when Tenant has completed all punchlist items and all necessary inspections required in connection with any permits have been completed and signed off as approved by the appropriate governmental authorities.

Tenant's Personal Property means all furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises.

Term means the period from the Commencement Date until the expiration date of the Initial Term.

Uninsured Casualty means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured under the policies of insurance that Tenant is required to carry under Section 19 hereof, or (2) an event of damage or destruction occurring at any time during the Term, which is covered under Tenant's policies of insurance that Tenant is required to carry under Section 19 hereof; but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) plus the amount of any applicable policy deductible. Damage or

destruction due to flood or earthquake shall be deemed an Uninsured Casualty notwithstanding that there may be insurance coverage.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT

**BGCA MANAGEMENT, LLC, a Delaware
limited liability company**

By: ANOTHER PLANET ENTERTAINMENT, LLC

By: _____
Steve Welkom

By: _____

CITY

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,**

By: _____
City Administrator

By: _____
Amy L. Brown
Director of Property

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

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a municipal corporation,**

By: _____
City Administrator

By: _____
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

MTA Commission Resolution No. _____ Adopted on _____

Board of Supervisors Resolution No. 289-10 Adopted on 6/29/10

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TENANT

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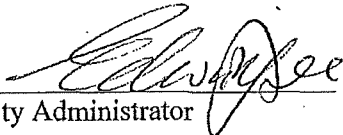
By: ANOTHER PLANET ENTERTAINMENT, LLC


By: _____
Steve Welkom

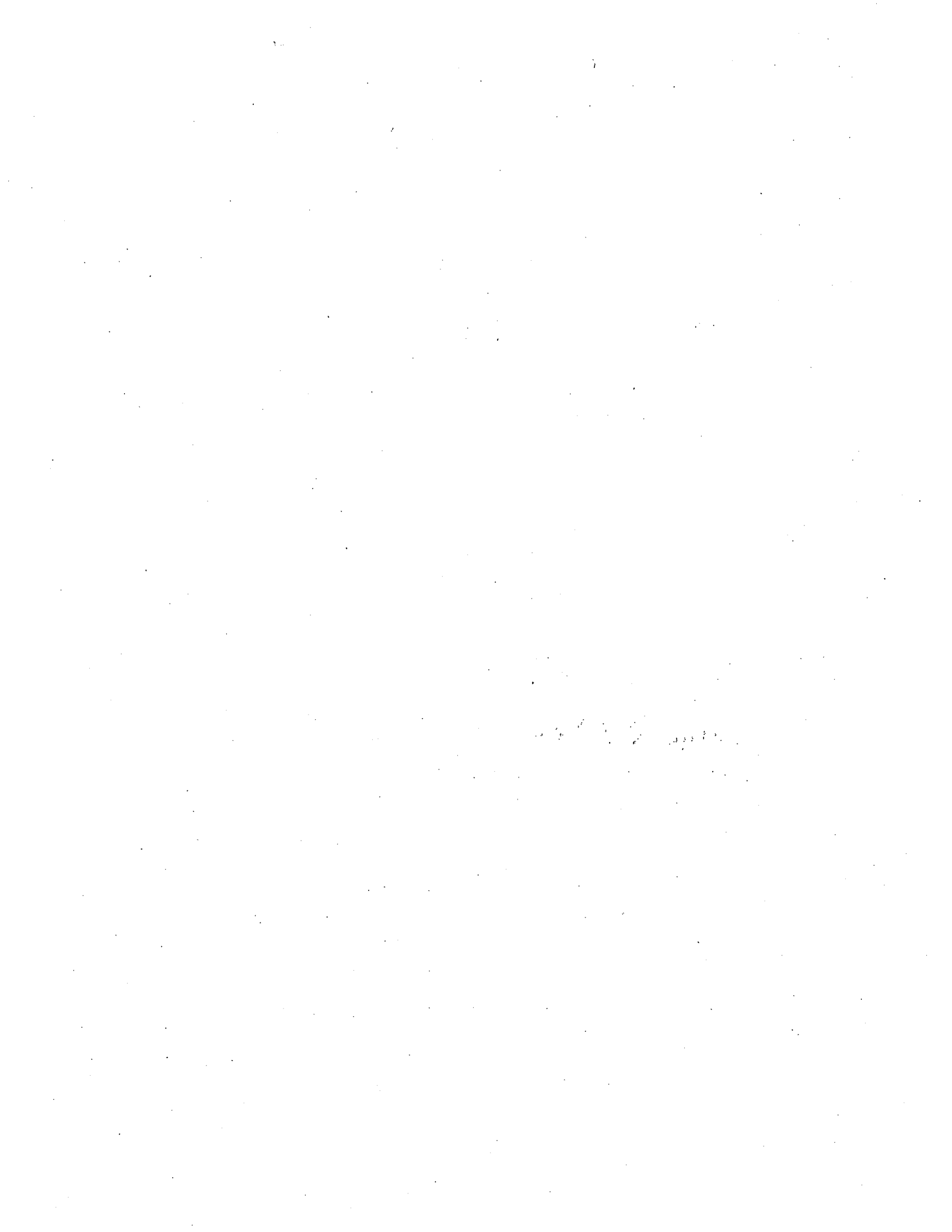
By: _____

CITY

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By: 
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Director of Property



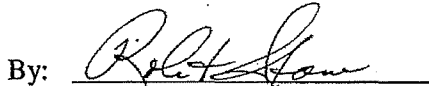
CONSENT TO PARKING PROVISIONS (Section 2.4):

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the SAN
FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY

By: 
NATHANIEL P. FORD,
Executive Director

APPROVED AS TO FORM:


DENNIS J. HERRERA
City Attorney

By: 
for Charles R. Sullivan
Deputy City Attorney

Board of Supervisors Resolution No. 289-10 Adopted on 6/29/10

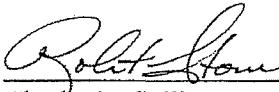
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APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 
for Charles R. Sullivan
Deputy City Attorney

Board of Supervisors Resolution No. _____ Adopted on _____

EXHIBIT A

**Description of the Premises
and
Tangible Personal Property**

The Building known as the Bill Graham Civic Auditorium located on a parcel of land (Block 0812, Lot 001), bordered by Grove, Hayes, Polk and Larkin Streets in San Francisco, California.

TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADI AMT	2005 ON HAND	ADI AMT	2006 ON HAND	ADI AMT	2007 ON HAND	TOTAL VALUE
AV		Amplifier, Power Crest	Pro Media	4001	500.00	C	2		2		2		2	1,000.00
**							2	0	2		2		2	1,000.00
EG	932-0	DRAIN CLEANING MACHINE	GRAINGER		412.50	C	1		1		1		1	412.50
EG	188-0	DRAIN ROOTER ELECTRIC GREEN	MARPAC-M		600.00	C	1		1		1		1	600.00
EG	279-4	DRILL	GRAINGER	4PD90	179.00	C	1		1		1		1	179.00
EG	1-0	DRILL PRESS GRAY	DELTA	52-334	250.00	C	1		1		1		1	250.00
EG		Drill, Cordless Kit	Granger	4EB40	379.00	C	1		1		1		1	379.00
EG	205-0	GRINDER BENCH ELECTRIC GRAY	STANLEY	XG-00033	210.87	C	1		1		1		1	210.87
EG	170-2	KEY CUTTER ELECTRIC BLUE	ILCO DUNICAN 2584	3782	454.00	C	1		1		1		1	454.00
EG	707-1	LIFT, SCISSOR 19' GENIE ELECTRIC	GENIE/HERTZ-BIG4	GS1930	8,515.00	C	1		1		1		1	8,515.00
EG	204-0	PLANNER WOOD ELECTRIC GRAY	SEARS 113-206931	1279-P0088	200.00	C	2		2		2		2	400.00
EG	926-5	ROUTER DEWALT	DEWALT GRAINGER		227.00	C	1		1		1		1	227.00
EG	5-0	SAW BAND 12" ELECTRIC GRAY	SEARS 113-243310	1254-P0011	950.00	C	1		1		1		1	950.00
EG	6-0	SAW BAND 14" ELECTRIC GRAY	ROCKWELL 14-28-200	LM-8361	750.00	C	1		1		1		1	750.00
EG	2-0	SAW BAND ELECTRIC GRAY	WALKER TURNER	51BE2A	750.00	C	1		1		1		1	750.00
EG	4-0	SAW TABLE POWERMATIC GREEN	YOUNG 65		2,000.00	C	1		1		1		1	2,000.00
EG		Saw, Band	Granger	6Z3910	319.00	C	1		1		1		1	319.00
EG	277-1	WASHER PARTS	GRAINGER 32746		461.50	C	1		1		1		1	461.50
EG	202-0	WELDER ARC ELECTRIC BLUE	MILLER M180P	W-310289	2,000.00	C	1		1		1		1	2,000.00
**							18	0	18		18		18	18,857.87
FB	585-2	BROILER, CHAR GLO RANGE 60" W/STAND	US RANGE/ECON.REST. FIXT		3,938.00	C	1		1		1		1	3,938.00
FB	600-0	CAGE STORAGE SMALL			300.00	C	4		4		4		2	600.00
FB	596-2	COFFEE MAKER ROUND LARGE			1.00	C	1		1		1		1	1.00
FB	564-1	CONTAINER BEVERAGE 10 GAL	AERVOID		1.00	C	8		8		8		4	12.00
FB	978-5	CUBER, ICE MANITOWOC	MANITOWOC		4,245.00	C	1		1		1		1	4,245.00
FB	610-0	DISHWASHER INDUSTRIAL			1.00	C	1		1		1		1	1.00
FB	603-0	DISPENSER NAPKIN PAPER			1.00	C	5		0		0		18	18.00
FB	601-0	DOLLY - GLASS RACKS			1.00	C	1		0		0		0	0.00
FB	561-1	HOT PLATE	BURN		1.00	C	14		14		14		-2	12.00
FB	585-0	OVEN & 6 BURNER WITH BROILER	VULCAN		5,000.00	C	1		1		1		1	5,000.00
FB	584-0	OVEN & GRILL WITH BROILER	VULCAN		5,000.00	C	1		1		1		1	5,000.00
FB	345-1	OVEN CONVECTION W/STAND			350.00	C	2		2		2		2	700.00
FB	581-0	OVEN SMALL	CRES-COR		500.00	C	2		2		2		2	1,000.00
FB	591-0	OVEN, 3 DOOR COUNTER TOP			500.00	C	1		1		1		1	500.00
FB	585-1	OVEN, COMBI FULL SIZE CLIMA PLUS	RATIONAL/ECON. REST. FIX		34,995.00	C	1		1		2		3	104,985.00
FB	614-0	PAN, HOTEL 1/2 SIDE 600			1.00	C	2		2		2		2	2.00
FB	616-0	PAN, HOTEL FULL SIDE 200			1.00	C	12		12		12		278	290.00
FB	617-0	PAN, HOTEL FULL SIDE 400			1.00	C	3		3		3		167	170.00
FB	615-0	PAN, HOTEL FULL SIDE 600			1.00	C	1		1		1		489	490.00
FB	619-0	PAN, SHEET			1.00	C	59		59		59		431	490.00
FB	570-1	POPCORN WARMER			1.00	C	5		5		5		5	5.00
FB	978-2	REFRIGERATION UNIT	RSD		26,968.34	C	1		1		1		1	26,968.34
FB	361-1	REFRIGERATOR, SLIDING DOOR			500.00	C	3		3		3		-1	1,000.00
FB	599-1	SNEEZE GUARD			1.00	C	2		2		2		2	2.00

Exhibit A Page 2

TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADJ AMT	2005 ON HAND	ADJ AMT	2006 ON HAND	ADJ AMT	2007 ON HAND	TOTAL VALUE	
FB	592-0	SODA SYSTEM	PERLICK		1.00	C	4	-4	0		0		0	0.00	
FB	631-0	STAND FOR WINE BUCKET			1.00	C	76	-76	0		0		0	0.00	
FB	610-1	TABLE ROLLER DISHWASHER			1.00	C	1		1		1		1	1.00	
FB	226-1	TABLE WOOD OBLONG 18"X72"	HOWE 268P		120.00	C	393		393		393		393	47,160.00	
FB	640-0	TABLE WORK WOOD WALNUT			1.00	C	1		1		1		1	1.00	
FB	641-0	TABLE, 1/4 MOON			1.00	C	2		2		2		2	2.00	
FB	366-1	TOASTER DOUBLE ELECTRIC	TOASTMASTER		1.00	C	1		1		1		1	1.00	
FB	644-0	TRAY, RED CAFETERIA			1.00	C	70		70		70		70	70.00	
FB	618-0	TUB "BUS-BOY" PLASTIC			1.00	C	3		3		3		3	3.00	
**							683	-86	597		599		1,981	202,667.34	
OF	904-6	Camera, Recorder, B/W Monitor 20"	ADI		1,061.90	C	1		1		1		1	1,061.90	
OF		ADAPTOR, 8 PORT	ACTIVE DATA		800.00	C	1		1		1		1	800.00	
OF		Chair, Black w/arms	ABS		359.98	C	1		1		1		1	359.98	
OF		Chair, Executive High Back 26"W Leather	ABS	JN Office	399.00	C	1		1		1		1	399.00	
OF	44-2	Chair, Guest Flair Arm Black Fabric	National Business Furniture	Fabric 226-27 Ebony	649.00	C	2		2		2		2	1,298.00	
OF		CLOCK EMPLOYEE TIME CARD BEIGE	AMANO 6830	7708548H	299.00	C	1		1		1		1	299.00	
OF		Copier, Brother Digital Duplex 8045D	ABS	Civic ADMIN	499.99	C	1		1		1		1	499.99	
OF		Copier, Sharp A1-1551CS	Office Depot		599.11	C	1	-1	0		0		0	0.00	
OF	908-0	DATA PORT, ADTRAN W/TI NETWORK CABLE	COMM. RESOURCES		1,935.00	C	2		2		2		2	3,870.00	
OF		Desk, Computer Credenza 72"W Cherry	National Business Furniture	10602	979.00	C	1		1		1		1	979.00	
OF		Desk, Executive L 72"W w/rt return Cherry	National Business Furniture	10599	1,595.00	C	1		1		1		1	1,595.00	
OF		Desk, Overhead Storage Unit Cherry	National Business Furniture	10603	649.00	C	1		1		1		1	649.00	
OF	944-1	Fax Machine, Canon L 80 PP (Security)	ABS	Canon	198.00	C	1		1		1		1	0.00	
OF		FAX MACHINE, LASERJET 3100SE PP	OFFICE DEPOT	HP	699.00	C	1		1		1		1	699.00	
OF		Love Seat, Fabric Standard w/Arm Black	National Business Furniture	Fabric 226-27 Ebony	749.00	C	1		1		1		1	749.00	
OF	903-11	MEGACOM RTA UNIT (8 PORTS)	ACTIVE DATA		800.00	C	1		1		1		1	800.00	
OF	904-2	MONITOR COMPUTER 19" COLOR	DELL COMPUTERS		337.46	C	1		1		1		1	337.46	
OF	843-4	PRINTER, DESKJET 840C	HP/MAX COMPUTERS		108.00	C	1		1		1		1	108.00	
OF		Printer, HP Laserjet 4250	ABS	Security	999.99	C	1		1		1		1	999.99	
OF	895-7	PRINTER, LASERJET 5N 4MB	HEWITT PACKARD		1,499.00	C	1		1		1		1	1,499.00	
OF		Printer, Photosmart HP Photo 7760	ABS	Security	129.99	C	1		1		1		1	129.99	
OF		Table, Cocktail Mahogany 48 x 24	National Business Furniture		395.00	C	1		1		1		1	395.00	
OF		Table, Computer Grey 48x24x29 1/2	ABS	Security	249.99	C	1		1		1		1	249.99	
**							24	-1	23		23		23	17,778.30	
OP	64-0	ASH URN, STAINLESS STEEL			156.00	C	6		5		5		5	624.00	
OP	220-1	BARRICADE STREET METAL GRAY Barricades, Gray w/2 wheels and Flat Side	LAWRENCE METALS Friedrichs	#FZ-B-FF	210.00	C	51		51	-30	21		-13	8	1,680.00
OP					100.00	C	50		50	-36	14		53	6,700.00	
OP	249-1	BASKET LAUNDRY CANVAS W/WHEELS	DANDUX #40-200		240.00	C	4	-1	3	-3	0		0	0.00	
OP		Battery System with Cart for Tennant 7100	Clean Source		1,769.00	C	1		1		1		1	1,769.00	
OP	211-0	BED HOSPITAL CHROME/BEIGE	WINFIELD		1,363.20	C	1		1		1		1	1,363.20	
OP	792-1	BENCH PLANO WOOD BLACK	STEINWAY		350.00	C	1		0	1	1		1	350.00	
OP	219-1	BLACKBOARD PORTABLE	NASHIONAL SALES		187.87	C	10		10	4	14		14	2,630.18	
OP	67-0	BUFFER 20" HI-SPEED	PACIFIC 83419-037	00331-P	1,500.00	C	1		1	-1	0		0	0.00	

TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADJ AMT	2005 ON-HAND	ADJ AMT	2006 ON-HAND	ADJ AMT	2007 ON-HAND	TOTAL VALUE
OP	69-0	BUFFER 22" HI-SPEED	PACIFIC VHS-20	00330-P	1,500.00	C	1		1		1		0	0.00
OP	70-0	BUFFER 22" STRIPPER	PACIFIC		895.00	C	1	-1	0		0		-1	-895.00
OP	977-4	BUFFER, FLOOR MACHINE 20" 175 RPM	STERLING		947.52	C	1		1		1		1	947.52
OP	804-4	BUFFER, FLOOR MACHINE BOB CAT 17SS	NATIONAL		1,005.77	C	1		1		1		1	1,005.77
OP		Burnisher, Floor Rider Adv. Whidmatic 2700	Waxie		8,790.00	C	1		1		1		1	8,790.00
OP		Camera, Sony DSC60 digital	ABS	Security	269.99	C	1		1		1		1	269.99
OP	315-1	CAN GARBAGE, CONCRETE			220.00	C	8	-7	1	-1	0		0	0.00
OP	879-0	CAN GARBAGE ROUND 55 GAL	RUBBERMAID 2655		77.45	C	10		10	1	11		-1	10
OP	223-1	CAN GARBAGE SQ. GRAY	NASHIONAL OFFICE		225.75	C	8	-8	0		0		0	0.00
OP	840-1	CARPET SPOTTER AND UPHOLST. CLEANER	NATIONAL		704.65	C	1	-1	0	1	1		-1	0.00
OP	880-0	CART, JANITOR	RUBBERMAID 6152		86.92	C	4		4	2	6		6	521.52
OP		CHAIR, DOLLY FOR STACKING CHAIRS			49.99	C						2	2	99.98
OP	241-1	CHAIR, FOLDING GRAY/CHROME	KRUEGER #731-0		126.00	C	4000		4000	847	4847		-814	4033
OP		CHAIR, STACKING BURGUNDY	VIRCO		65.00	C							8	8
OP	240-0	CHAIR, STACKING GRAY/CHROME	FLXTURES "ENCORE"		67.00	C	3550	-10	3540	96	3636		-202	3434
OP	243-0	CHAIR, STORAGE RACK FOLDING CHAIR BIEGE	KRUEGER #202X		100.00	C	87	-7	80		80		-16	64
OP	81-0	CHARGER BATTERY 24 VOLT YELLOW	YALE L-A	3YTF18-865	750.00	C	1		1	-1	0		0	0.00
OP	84-0	CHARGER BATTERY 36 VOLT YELLOW	YALE 3YTF18-865	81711-YTW	750.00	C	1		1	4	5		5	3,750.00
OP	47-1	CLOCK DETEX SECURITY NEWMAN	DETEX "NEWMAN"		370.00	C	1		1		1		1	370.00
OP	824-2	COAT RACK, "Z" STYLE BLUE & BLACK BASE	ASTECHNOLOGIES		69.30	C	20	8	28	3	31		-3	28
OP	218-0	COAT RACK, PORTABLE	LAWRENCE		135.00	C	10	-10	0		0		0	0.00
OP	218-1	COAT RACK, PORTABLE	LAWRENCE		135.00	C	18	-18	0		0		0	0.00
OP	931-1	CONTAINER COMPACTOR RECEIVER	GOLDEN GATE DISPOSAL		5,924.00	C	1		1		1		1	5,924.00
OP	916-3	CONTAINER RECYC 60 GAL BRN CANS	RECY-CAL	RO600BN	85.00	C	25		25	11	36		-1	35
OP	948-0	CONTAINER, GARBAGE GLUTTON 56 GAL W/TOP	RUBBERMAID/WAXIE		133.05	C	168	-40	128	-16	112		-3	109
OP	959-3	CONTAINER, RECY BROWN 64 GAL CANS 1999	RECY-CAL SUPPLY		85.00	C	14	-14	0	36	36		-36	0
OP	959-4	CONTAINER, RECY GREEN 64 GAL PAPER 1999	RECY-CAL SUPPLY		64.50	C	6		6	5	11		-11	0
OP	959-1	CONTAINER, RECYC 26" GREEN W/SLOTTED LID 1999	RECY-CAL SUPPLY		101.90	C	6		6	-2	4		-4	0
OP	959-2	CONTAINER, RECYC 44" BRN W/RND HOLE LID 1999	RECY-CAL SUPPLY		124.90	C	18		18	-4	14		-14	0
OP	916-4	CONTAINER, RECYC 60 GAL GRN PAPER	RECY-CAL	RO600GN	64.50	C	6		6	4	10		10	645.00
OP		Container, Skirt Cover Black 44 Gal. Continental	Cover Co. Inc.	Fairbanks Black	85.00	C	20	-12	8	-3	5		-5	0
OP		Container, Trash 44 gal w/lid and dolly	Economy Rest. Fixures	4444G, 4457, 3254P	70.88	C	20	-13	7		7		-7	0
OP	89-1	COUCH 3 SEATER CHROME/GRAY	AMERICAN SEATING		1,000.00	C	1	-1	0		0		1	1,000.00
OP	90-1	COUCH 3 SEATER LEATHER BLACK			150.00	C	2	-2	0		0		0	0.00
OP		DANCE FLOOR, 3X3 SQUARES	SICO		71.00	C							108	108
OP	953-3	DANCE FLOOR, RACK 1999	SICO EASY ROLLING		261.00	C	13		13	-8	5		5	1,305.00

TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADJ AMT	2005 ON HAND	ADJ AMT	2006 ON HAND	ADJ AMT	2007 ON HAND	TOTAL VALUE
OP	696-1	DEFIBRILLATOR, W/EG FR2	HEARTSTREAM		3,315.00	C	1		1		1		1	3,315.00
OP	931-0	DOCK PLATFORM ADJUST W/LADDER	WAREHOUSE ENG		35,877.28	C	1		1		1		1	35,877.28
OP	93-1	DRAPE VELVET BLUE 8X16-24	OCEANIC MARINE		133.90	C	31	-3	28		28	6	34	4,592.60
OP	94-1	DRAPE VELVET BLUE 8X24-32	OCEANIC MARINE		149.00	C	34	-9	25		25	-7	32	4,768.00
OP	894-0	Duplex Video, Multiplexes 9 channel color	ADI	PE-MX-4009CD	1,524.99	C					1		1	1,524.99
OP	686-5	FLOOR DRYER, TURBO CAT III	NATIONAL		238.70	C	2		2	-1	1	-1	0	0.00
OP	931-2	GATE, PORTABLE	MCCARR MASTER		472.30	C	1	-1	0		0		0	0.00
OP	931-3	GATE, PORTABLE ADD ON UNIT	MCCARR MASTER		234.35	C	1	-1	0		0		0	0.00
OP	977-5	HAND TRUCK/DOLLIE	UNISOURCE		101.08	C	1	-1	0		0		0	0.00
OP	894-0	HEARING IMPAIRED, TRANSMITTER	PE.590 T FM		485.00	C	1		1		1		1	485.00
OP	844-3	LAUNDRY DRYER, ELECTRIC	COSTCO	SEDS800JQ	329.99	C	1		1		1	-1	0	0.00
OP	844-2	LAUNDRY, WASHER MAYTAG	MAYTAG		399.99	C	1		1	-1	0		0	0.00
OP		Laundry, Dryer Electric Kenmore 6.5 cu. Ft.	Kenmore		419.99	C							0	0.00
OP		Laundry, Washer Kenmore 3.2 cu. Ft.	Kenmore		299.99	C							0	0.00
OP	804-3	MACHINE, PACIFIC MINI-EDGER	NATIONAL		531.30	C	1	-1	0		0		0	0.00
OP	903-9	MEGACOM LDM MEEK (FR)	ACTIVE DATA		495.00	C	1	-1	0		0		0	0.00
OP	826-2	NURSE, CHAIR TASK	UNC-N5543701		189.99	C	1		1		1		1	189.99
OP	826-1	NURSE, DESK 60 X 30	HON-P3262G2S		399.99	C	1		1		1		1	399.99
OP		Nurse, Stretcher Adj Back w/4 wheels	Edwards Medical	21518	630.00	C	1		1		1		1	630.00
OP	971-3	NURSE, TABLE EXAM W/ADJ HEAD REST TAN	CAMERON MEDICAL		531.79	C	1		1		1		1	531.79
OP	206-0	OVEN MICROWAVE BROWN	KENMORE 565-8708510		150.00	C	1		1		1		1	150.00
OP		Oven, Microwave 1 cu. Ft. (EMP Breakroom)	ABS		89.95	C					1	-1	0	0.00
OP	133-1	PIANO, UPRIGHT BLACK W/COVER	STEINWAY #1098		9,000.00	C	1		1		1		1	9,000.00
OP	292-0	PLANTER ROUND FIBERGLASS GRAY			70.00	C	5	-5	0		0		0	0.00
OP	128-2	PODIUM, FULL HEIGHT WALNUT FINISH W/COVER	KRUG - MALIK CO.		1,183.50	C	16		16	10	26	-3	23	27,220.50
OP	127-1	PODIUM, TABLE-TOP	ENGINEERING DEPT.		150.00	C	20	-15	5		5	15	20	3,000.00
OP	128-1	PODIUM, UPRIGHT			237.50	C	28	-28	0		0		0	0.00
OP	687-2	PRESSURE WASHER, ELECTRIC W/LANCE	KEW 52C3KA/EASTERDAY	9075549	3,600.00	C	1	-1	0		0		0	0.00
OP	687-3	PRESSURE WASHER, SODA HOPPER/LANCE/SCRUB	KEW 52C3KA/EASTERDAY		2,177.00	C	1		1		1		1	2,177.00
OP		Printer, HP Photo Smart 7760 Security	ABS	Security	129.99	C	1		1		1		1	129.99
OP	882-0	REFRIGERATOR, 18 CU. FT	HOT POINT		377.97	C	1		1		1		1	377.97
OP	210-0	SCAFFOLDING ALUMINUM MOBILE	UP-RIGHT V-X		3,019.27	C	2		2		2		2	6,038.54
OP		Scrubber, Rider Floor Tennant 7100	Clean Source	7100-10241411	12,855.00	C	1		1		1		1	12,855.00
OP		Scrubber, Rider Floor Tennant SC7400 w/fast foam	Tennant Sales	7400-7675	39,240.00	C	1		1		1		1	39,240.00
OP	725-0	SCRUBBER, SIT-DOWN BLUE GIANT	TENNANT 527	524828	23,883.31	C	1		1		1		1	23,883.31
OP	888-2	SECURITY, CALL MASTER	ALPHONE 5		210.00	C	3		3		3		3	630.00
OP	888-0	SECURITY, CAMERA HIGH RESOLUTION	HS-2000		695.00	C	1		1		1		1	695.00
OP	888-1	SECURITY, MONITOR HI RESOLUTION 9"	SONY		190.00	C	3		3		3		3	570.00
OP	731-0	SHAMPOOER, CARPET DRY	HOST	38402 & 38396	1,500.00	C	1	-1	0		0		0	0.00
OP	931-4	SHELF WIRE 24 X 36 X74	GRAINGER		243.90	C	1		1		1		1	243.90
OP	931-5	SHELF WIRE 24 X 72 X74	GRAINGER		383.18	C	3		3		3		3	1,149.54

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TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADJ AMT	2005 ON HAND	ADJ AMT	2006 ON HAND	ADJ AMT	2007 ON HAND	TOTAL VALUE
OP	221-1	SIGN HOLDER, CHROME 22X28"	LAWRENCE #1310		177.00	C	5		5	-1	4	-4	0	0.00
OP	793-1	SKIRT, BLUE TABLE W/VELCO			75.00	C	122	-2	120	2	122	56	178	13,350.00
OP		Skirt, Table Black 30" H x 11' L	Economy Restaurant Fixt.		66.94	C	50		50	61	111	113	224	14,994.56
OP	934-3	STAGE RISER 2-STEP STAIR UNIT	STAGERIGHT		204.49	C	17		17	3	20	-11	9	1,840.41
OP	934-2	STAGE RISER 3-STEP STAIR UNIT	STAGERIGHT		303.71	C	17		17	6	23	-4	19	5,770.49
OP	934-0	STAGE RISER 6' X 8' ADJ 16" X 24"	STAGERIGHT		877.25	C	34		34	-2	32	25	57	50,003.25
OP	934-1	STAGE RISER 6' X 8' ADJ 24" X 32"	STAGERIGHT		907.50	C	33		33		33	46	79	71,692.50
OP	934-4	STAGE RISER HANDI-RAMP	STAGERIGHT		5,566.00	C	3	-3	0		0	3	3	16,698.00
OP		FOLD&ROLL												
OP	934-5	STAGE RISER SKIRT 16"-24" BLACK	STAGERIGHT		145.20	C	12		12		12	-10	2	290.40
OP	934-6	STAGE RISER SKIRT ADJ 24"-32" BLACK	STAGERIGHT		169.40	C	5		5		5	-4	1	169.40
OP	739-2	STAGE SYSTEM 32' X32' X 48" TO 78"	STAGERIGHT ME-1000	ME-1000	31,890.00	C	1	-1	0		0		0	0.00
OP	739-1	STAGE SYSTEM 80' X 56' X 48" TO 78"	STAGERIGHT ME-1000	ME-1000	107,936.0	C	1	-1	0		0		0	0.00
OP					0									
OP	739-3	STAGE TRANSPORT FOR STACKABLE DECKS	STAGERIGHT 32220	32220	953.00	C	6		6	1	7	-3	4	3,812.00
OP		Stanchion, Bell Time Tensbr 800 Series DK Blue Tape	Tamis Corp	889-33-23-68	130.55	C	60	-35	25	19	44	15	59	7,702.45
OP	231-0	STANCHION, CHROME	LAWRENCE METALS		42.00	C	30	-12	18	24	42	-3	39	1,638.00
OP	232-1	STANCHION, ROPE BLUE VELVET	LAWRENCE METALS		35.00	C	30	-10	20	27	47	-24	23	805.00
OP		Stanchion, Storage Rack Tensabraters 16 post	Lavi Industries	#16	633.75	C	4	1	5	-2	3		3	1,901.25
OP	686-01	STEAM CLEANER, KEW 3803V MACHINE	KEW 3803V	#2112029	4,291.10	C	1	-1	0		0		0	0.00
OP	936-0	TABLE, 18" X 6' 1999	VIRCO #62186		72.00	C	290		290	432	722	-214	508	36,576.00
OP		TABLE, 18" X 8'	VIRCO/CAMELOT		85.00	C							236	20,060.00
OP	227-1	TABLE, 66" ROUND FOLDING LEGS	FACS FOR OFFICES		264.00	C	263	-115	148	130	278	-42	236	62,304.00
OP	965-0	TABLE, 72" ROUND BLK EDGE	CAMELOT WEST		109.20	C	15	-8	7	1	8	-7	1	109.20
OP	138-1	TABLE, CONFERENCE MAROON			180.00	C	1		1		1		1	180.00
OP	254-1	TABLE, CONFERENCE MOBILE BRN.	SICO #100835		871.00	C	1		1		1	-1	0	0.00
OP	55-0	TABLE, EXAM LEATHER BEIGE			800.00	C	1		1		1		1	800.00
OP	959-0	TABLE, RACK FOR 18" X 72" 1999	VIRCO MFG		491.00	C	43	-9	34	6	40	2	42	20,622.00
OP		TABLE, RACK FOR 18" X 96"	VIRCO MFG		575.00	C							18	10,350.00
OP	953-6	TABLE, RACK FOR 66" & 72" ROUNDS 1999	VIRCO TTS7		950.00	C	23	-12	11	25	36	-21	15	14,250.00
OP	174-0	TICKET BOX METAL			249.00	C	8		8		8	-7	1	249.00
OP	881-2	TILT TRUCK, 1 CU YD GRAY RUBBERMAID	RUBBERMAID/SANTORA SALES		489.00	C	10	-5	5		5		5	2,445.00
OP	881-0	TILT TRUCK, GRAY 1/2 CU YD RUBBERMAID #1305	RUBBERMAID #1305		307.74	C	12	-6	6	-5	1	-1	0	0.00
OP	256-0	TILT TRUCK, GRAY RUBBERMAID #1015	RUBBERMAID #1015		473.00	C	10	-4	6		6	-4	2	946.00
OP	173-1	TURNSTILE, BLACK			1,250.00	C	12		12	7	19	-6	13	16,250.00
OP	173-3	TURNSTILE, COVERS CUSTOM MADE	SUTTER FURNITURE MFG.		85.00	C	15	-3	12		12	1	13	1,105.00
OP	878-0	VACUUM, 16"	SANTAIRE	955189308,261,298	252.95	C	6	-6	0		0		0	0.00
OP	698-0	VACUUM, CLEANER UPRIGHT 12"	TAMARAS	893704722,89370434	195.00	C	1	-1	0		0		0	0.00
OP	928-6	VACUUM, SPACE CLARK 590	CLARK		1,653.00	C	1		1		1		1	1,653.00
OP	928-8	VACUUM, UPRIGHT 12"	CLARK		173.82	C	2		2	2	4	-4	0	0.00
OP	928-7	VACUUM, WEIDRY	CLARK		509.50	C	1		1		1	-1	0	0.00
OP	804-2	VACUUM, WEIDRY CLARK POLY	NATIONAL		546.96	C	1		1		1	-1	0	0.00
OP		Vacuums, Euroka Santeire SC899	Unsource		244.00	C					1		1	488.00
OP	883-0	VCR, GYFR TIME LAPSE	TLC-2100	60205594	1,625.00	C	1		1		1		1	1,625.00

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TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L O C	2004 BEG BAL	ADJ AMT	2005 ON HAND	ADJ AMT	2006 ON HAND	ADJ AMT	2007 ON HAND	TOTAL VALUE
OP	883-1	VCR, GYR TIME LAPSE	TLC-2100	60205232	1,625.00	C	1		1		1		1	1,625.00
OP	883-2	VCR, VHS LOG RECORDER	PHILIPS PRO MEDIA	90601881	650.00	C	1		1		1		1	650.00
OP	702-0	VEHICLE, FORKLIFT CLARKE	CLARKE FB113655083	N965801	23,000.00	C	1		1		1		1	23,000.00
OP	98-0	VEHICLE, FORKLIFT TCM PROPANE	TCM-FG35M5	4400128	25,000.00	C	1		1		1		1	25,000.00
OP	96-0	VEHICLE, FORKLIFT YALE 36V	YALE-E	ERC050FB-1136S5083	22,000.00	C	1		1		1		1	22,000.00
OP	806-2	VIDEO RECORDER, TIME LAPSE	SONY	17640	1,460.00	C	1		1		1		1	1,460.00
**							9,477	-439	9,038		10,695		9,899	1,445,916.81
TH	856-1	ALTMAN 6 X 12			120.00	C	10		10	-10	0		0	0.00
TH	856-0	ALTMAN 6 X 16			120.00	C	30		30	-30	0		0	0.00
TH	856-2	ALTMAN 6 X 9			120.00	C	5		5	-5	0		0	0.00
TH	855-1	COLORTRAN 10 DEGREES			90.00	C	6		6		6		6	540.00
TH	855-0	COLORTRAN 12 DEGREES			90.00	C	7		7		7		7	630.00
TH	855-2	COLORTRAN 5 DEGREES			200.00	C	12		12		12		12	2,400.00
TH	868-7	CONTROL CABLE ASST (DMX)			2,000.00	C	1		1		1		1	2,000.00
TH	860-2	DIGITAL DIMMER 12KW (AVAB)			400.00	C	54		54		54		54	21,600.00
TH	860-1	DIGITAL DIMMER 3KW (AVAB)			300.00	C	24		24		24		24	7,200.00
TH	710-2	DIGITAL LIGHTBOARD M96 CHANNEL	STRAND		2,000.00	C	1		1		1		1	2,000.00
TH	865-1	DRAPERY BLACK DUVEYNE 4X16' CARRYOFF			150.00	C	20		20		20		20	3,000.00
TH	866-1	DRAPERY BLACK DUVEYNE W/TIES 24X15'			700.00	C	4		4		4		4	2,800.00
TH	866-0	DRAPERY BLACK DUVEYNE W/TIES 24X20'			800.00	C	4		4		4		4	3,200.00
TH	866-3	DRAPERY BLACK DUVEYNE W/TIES 25X20'			700.00	C	12		12		12		12	8,400.00
TH	864-0	DRAPERY BLACK SCRIM 30X60'			1,000.00	C	1		1		1		1	1,000.00
TH	866-2	DRAPERY BLK VELOUR W/TIES 20X50'			1,000.00	C	4		4		4		4	4,000.00
TH	867-0	DRAPERY BLUE COMMANDO CLOTH 4' X 12'			700.00	C	30		30		30		30	21,000.00
TH	863-1	DRAPERY BLUE VELOUR BORDER 18'X60'			500.00	C	1		1		1		1	500.00
TH	863-0	DRAPERY BLUE VELOUR BORDER 9'X60'			300.00	C	1		1		1		1	300.00
TH	863-2	DRAPERY BLUE VELOUR LEGS 48'X12'			700.00	C	4		4		4		4	2,800.00
TH	863-4	DRAPERY BLUE VELOUR TABS 22X31			500.00	C	2		2		2		2	1,000.00
TH	863-3	DRAPERY BLUE VELOUR TRAVELLER 38X60'			3,000.00	C	1		1		1		1	3,000.00
TH	862-1	HAMPER YELLOW'			250.00	C	10		10		10		10	2,500.00
TH	857-0	KLIEGL 1357/10			30.00	C	70		70		70		70	2,100.00
TH	710-0	LIGHTING CONTROL BOARD 12 CHANNEL	LIGHTSIZER		4,500.00	C	1		1		1		1	4,500.00
TH	710-1	LIGHTING CONTROL BOARD 72 CHANNEL			4,500.00	C	1		1		1	-1	0	0.00
TH	868-9	MOTOR, 1/2 TON			3,500.00	C	48		48		48	-24	24	84,000.00
TH	859-0	MULTI CABLES W/FAN OUTS 100' (8CIRCUIT)			900.00	C	19		19		19	-10	9	8,100.00
TH	858-0	PAR 64			50.00	C	120		120		120	-60	60	3,000.00
TH	858-2	PAR 64 XRAY			100.00	C	2		2		2		2	200.00

TP	ITEM #	DESCRIPTION	MANUFACTURER	SERIAL #	ITEM VALUE	L	2004	ADJ	2005	ADJ	2006	ADJ	2007	TOTAL
						O	BEG	AMT	ON	AMT	ON	AMT	ON	VALUE
						C	BAL		HAND		HAND		HAND	
		STRIP/54/3CIRCUIT/45WINDOW												
TH	859-3	PIN CABLE 25'			45.00	C	30		30		30		5	225.00
TH	859-5	PIN CABLE 5'			10.00	C	10		10		10		2	20.00
TH	859-2	PIN CABLE 50'			90.00	C	20		20		20		4	360.00
TH	709-2	RESCUE POLE W/ADAPTOR, REMOTE SURETY	STAGE RIGGING INC.		265.00	C	2		2		2		2	530.00
TH	709-1	RESCUE UTILITY SYSTEM, SURETY 80' LIFT	STAGE RIGGING INC.	RS15-400 SURETYMAN	1,746.24	C	2		2		2		2	3,492.48
TH	869-1	RIGGING ALUMINUM PIPE 21'X1- 1/2'			25.00	C	12		12		12		12	300.00
TH	869-3	RIGGING BLOCK & FALLS 100'			200.00	C	8		8		8		8	1,600.00
TH	869-4	RIGGING NICOFPRESS SYSTEMS 1/8" & 1/4"			150.00	C	2		2		2		2	300.00
TH	869-5	RIGGING SPANSET RIGGING SLINGS			7.00	C	48		48		48		48	336.00
TH	869-2	RIGGING STEEL PIPE 20'X1-1/2"			40.00	C	6		6		6		6	240.00
TH	869-0	RIGGING TRAVELER TRACK 60'			300.00	C	2		2		2		2	600.00
TH	329-0	SPOTLIGHT XENON SUPER- TROOPER	STRONG		3,200.00	C	4		4		4		4	12,800.00
TH	870-2	STAGE PLATFORM BLACK 2X 6'			180.00	C	5		5	-1	4		4	720.00
TH	870-4	STAGE PLATFORM BLACK 2X 8'			150.00	C	1		1		1		1	150.00
TH	870-5	STAGE PLATFORM BLACK 3X 3'			125.00	C	1		1		1		1	125.00
TH	870-1	STAGE PLATFORM BLACK 4X 6'			200.00	C	6		6		6		6	1,200.00
TH	861-0	TRUSS ROHN 10'			100.00	C	6		6	-6	0		0	0.00
**							670		670		618		474	214,768.48
*														
*														
							10,874		10,348		11,955		12,397	1,900,988.80

EXHIBIT B

Initial Improvements

Bill Graham Civic Auditorium Another Planet Entertainment	Project Budget	
	Detail	Budget
"A" PRIORITIES (Phase 1)		
Acoustical Treatments - Auditorium		937,871
9" acoustical insulation above plaster ceiling	31,944	
FWP w/metal treatment at tension grid	107,448	
1" thick FWP at suspended ceiling panels	232,804	
2" thick FWP w/metal treatment at loge	127,050	
2" thick FWP w/metal treatment at aud balc walls and corners	317,625	
2" thick FWP w/metal treatment at loge fascia	50,820	
2" thick duct liner - rear aud wall full height	70,180	
Proscenium - Drapery		577,869
Steel support for proscenium bulkheads & drapery	60,500	
Platform base panels & frames - F&G	121,000	
Structural suspension system for panels at plaster ceiling	63,525	
Bulkhead framing infill to underside of ceiling finishes - A&B	36,300	
Drapery (65' high), hoists (16), power distro, control, truss, installation allowance (coiled wire design not included)	296,544	
Auditorium		263,175
Soft Demolition	34,485	
Patch & replace ceiling tiles under Loge	2,420	
Clean & reseal concrete floor	7,865	
Paint auditorium wall finishes	66,550	
Paint ceiling tiles under loge	10,285	
Paint exposed plaster ceiling and columns	19,360	
Paint metal deck, tension grid frame, hangers, bulkheads and railings	114,950	
Paint backstage areas (crossover)	7,260	
Miscellaneous Auditorium Repairs / Upgrades		37,631
Re-anchor bolts at existing loge handrails	3,025	
Painted mid-rail Unistrut w/attachments	29,040	
Sight seal applied to each door leaf at meeting stiles	5,566	
Audio		856,697
Stage Sound System-Mini-Mixer; Microphone Announce Pckg	800,000	
Audio Hoists (8) Rigging, Power Distro, Cabling, Control 56,697		
FOH Console & Effects / Stage Monitor System - rental as necessary		
Stage Microphone & Equipment Package - rental as necessary		
Lighting, Rigging, Drapery, Staging		1,092,141
Stage Lighting, cabling, power distro, dimming, control, com,	219,321	
Truss, Hoists (34) Rigging, Power Distro, Cabling, Control, Fall Arrest, Access	313,140	
Stage Drapery: Main Traveler, Upstage Traveler, Valance, Borders, Legs	146,731	
Installation Allowance - Rigging, Drapery, Lighting	160,501	
Add for Moving Light Package	252,448	
Portable Retractable Seating Risers with mounted seats		681,176
13 rows with 656 nose-mounted seats, mix platform & loose chairs	681,176	
Includes installation and freight plus 10% contingency		
Modify/supplement existing performance stage		50,000

**Bill Graham Civic Auditorium
Another Planet Entertainment**

Project Budget

	Detail	Budget
IT Systems Upgrade		30,000
Fixed Seating Survey & Repair		33,803
30% of 2,674 = 802 seats at \$35.00 per seat		
Lead / asbestos testing prior to permits / construction		5,200
Review, inspection, sampling		
In depth plenum evaluation	5,200	
Abatement		50,000
Street lobby ceiling; ACCO work / mechanical areas		
Public Restrooms		5,990
Refurbish & repair existing fixtures		
Miscellaneous		222,550
60ft lift booms (4 for 3 months)	36,300	
Misc demo (telephone counters, MEP cutouts)	6,050	
Code compliant door hardware	12,100	
Restroom wayfinding signage	12,100	
Engineering services - Electrical	30,250	
Preconstruction Survey - Electrical	6,050	
Additional Wayfinding	15,000	
Opening Night MEP Standby	5,000	
Testing/Xraying - infrared thermography, etc.	15,000	
Misc Metals	24,200	
Misc Construction Related Exposure	60,500	
Engineering / Evaluation of Rigging & Flooring / Structural		7,775
T1 - Structural Review for proposed Rigging Loads - grid & forestage		
T2 - Structural Review for proposed Rigging Loads - long span truss		
T3 - Proscenium curtain support	5,450	
T4 - LED sign		
T5 - Floor review for retractable, portable seating	2,325	
Mechanical Systems - HVAC		100,000
ACCO Evaluation Study 2008		
Maintenance contingency to be directed by HVAC engineer	100,000	
Vertical Transportation - Immediate Recommendations		149,125
Two Freight Elevators - control, motors, interlocks, COP upgrade 149,125		
Preconstruction Costs:		220,220
ELS - Design Development		
ELS - Document Prep	90,220	
Chips Davis - Initial Acoustic Recommendations & Testing		
Chips Davis - Consulting	3,000	
SF City Plan Check	17,000	
FD Plan Check	10,000	
ADA Plan Check	10,000	
SF City Permit	20,000	
Misc Permits	5,000	
Deputy Inspection	15,000	
Misc Fees/Outside consultants/reimbursables	50,000	
SUBTOTAL: "A" PRIORITIES:		5,321,223
Project Management @ 2.25%		119,728
Insurance @ 1%		53,212

**Bill Graham Civic Auditorium
Another Planet Entertainment**

Project Budget

	Detail	Budget
TOTAL: "A" PRIORITIES:		5,494,163
"B" PRIORITIES (Phase 2)		
Portable Bars - 12 locations <i>First and Second Level to target 64 POS</i>		289,740
Cash Registers (if no POS) 34 units	34,000	34,000
Loading Area - new platform system - to be designed		125,000
Cutout & infill for draw lift	13,310	
Bridge loading dock lift	39,930	
Lift power & disconnect	9,983	
Structural and misc	61,777	
Production Electrical Disconnects 4 400a / 1 200a panels with camlocks		23,765
New floor & riser seats w/gang capability - 1,400 @ \$95 <i>Includes storage carts</i>		145,968
Mechanical Systems - HVAC		436,133
Cooling Tower (1 of 3) - Clean & install Water Treatment System New outside, return and exhaust air dampers (6 of 14) New chilled and hot water electronic control valves (6 of 14) Automated Logic Control (ALC) System - partial upgrade	436,133	
Vertical Transportation		129,405
Six Passenger Elevators - ADA upgrades	107,695	
Two Chair Freight Elevators - improved lighting	1,710	
Safety latches on Passenger Elevator Doors - placeholder/estimate	20,000	
First Floor Dressing Rooms		19,481
Demo makeup stations & shelving	726	
Room for water heater	6,050	
Paint walls & ceilings	4,235	
Water heater & piping	5,445	
Power for water heater	3,025	
Basement Lobby		34,122
Patch & replace tiles	4,235	
Epoxy flooring patching	1,210	
Paint lobby walls	10,890	
Paint acoustical ceiling	9,680	
Paint toilet walls, partitions & ceiling	8,107	
Street Lobby (electrical/LED moved to "C")		148,225
Clean & reseal terrazo floor & base	72,600	
Terrazo flooring repairs	6,050	
Refurbish & repair light cove metal screen	9,075	
Paint walls, doors, frames & ceiling	60,500	
Second Floor Lobby		243,062
Patching for plumbing leak repair	12,100	
Patching for ceiling POS penetrations	6,050	
Patch & replace ceiling tiles	2,420	

**Bill Graham Civic Auditorium
Another Planet Entertainment**

Project Budget

	Detail	Budget
TV's for Dressing Rooms & Lounge Areas (as budget allows)		
Polk & Larkin		150,000
Remove/scarify epoxy flooring at halls		
Remove existing metal access panels		
Sight seal applied to each door leaf at meeting stiles		
New recessed 24x24 access doors		
Stretch fabric over existing panels		
Grind, prep, stain concrete		
Paint walls, doors, frames & ceiling		
Emergency egress lighting		
POS power / data distribution		
Provide 2 circuit track		
Lighting branch for track lighting		
Track heads - \$200 allowance per head		
Dimming Grafix eye 4000 - 12 zones		
Third Floor Lobby		175,008
18x18 carpet tiles incl demo	101,186	
6" resilient base		
Paint walls, doors, frames & ceiling		
Paint toilet walls, partitions & ceiling		
Alternate - Add All Halls paint and carpet	73,822	
Miscellaneous Auditorium Repairs / Upgrades		278,905
Colored LEDs at cove ceiling with dimming	114,950	
LED cove lighting at acoustic panels	154,275	
Remove existing strip fixtures at cove ceiling	9,680	
Auditorium		200,000
Alternate 1 - Replace downlights below loge	120,000	
Alternate 3 - Painting behind proscenium	80,000	
Street Lobby		187,550
LED lighting, branch circuiting, dimming	173,030	
Remove existing flourescent		14,520
SUBTOTAL: "C" PRIORITIES:		2,121,925
Project Management @ 1.765%		37,452
Insurance @ 1% 9		21,21
TOTAL: "C" PRIORITIES:		2,180,596
GRAND TOTAL OF A,B,C		9,682,609
Project Contingency		317,391
TOTAL PROJECT		10,000,000

**Bill Graham Civic Auditorium
Another Planet Entertainment**

Project Budget

	Detail	Budget
18x18 carpet tiles incl demo	141,906	
6" resilient base	6,776	
Paint walls, doors, frames & ceiling	48,400	
Paint toilet walls, partitions & ceiling	18,150	
Repair leaks under existing second floor rest rooms	7,260	
Fourth Floor Lobby		174,926
18x18 carpet tiles incl demo	51,032	
6" resilient base	4,356	
Paint walls, doors, frames & ceiling	32,670	
Paint toilet walls, partitions & ceiling	15,730	
Add All Halls to Public Restrooms (inc Paint, Carpet, Base)	71,138	
Polk & Larkin		150,000
Remove/scarify epoxy flooring at halls		
Remove existing metal access panels		
Sight seal applied to each door leaf at meeting stiles		
New recessed 24x24 access doors		
Stretch fabric over existing panels		
Grind, prep, stain concrete		
Paint walls, doors, frames & ceiling		
Emergency egress lighting		
POS power / data distribution		
Provide 2 circuit track		
Lighting branch for track lighting		
Track heads - \$200 allowance per head		
Dimming Grafix eye 4000 - 12 zones		
SUBTOTAL: "B" PRIORITIES:		1,953,827
Project Management @ 1.765%		34,485
Insurance @ 1%		19,538
TOTAL: "B" PRIORITIES:		2,007,850

"C" PRIORITIES (Phase 3)

POS System (50 x \$5000)		545,723
Micros - 64 stations - includes tax, shipping programming, training	325,624	
Slab sawing for POS stations	1,089	
Dowels & patching for POS	1,210	
POS power / data distribution to manager's office	87,120	
POS power / data distribution - 2nd floor lobby	130,680	
Third Floor - Artist Support including electrical upgrade		333,099
<i>Women's Restroom w/shower, Men's Restroom and add shower, Pantry includes electrical upgrades, paint and carpet tiles for four large rooms per ELS plan A403.2</i>		
Miscellaneous		101,640
Paint lobby stairwells (treads, landings, realings, walls, ceilings...)	53,240	
Lighting control title 24 compliance 48,400		
Furniture, Fixtures, Equipment		150,000
Office furniture		
Dressing room furniture and décor		
Stage equipment		
Lobby Furniture		
Polk and Larkin Furniture		
Catering Area Furniture		

EXHIBIT C

City Days

Events held or sponsored by the City shall receive first priority for use of City Days.

Civic and public events sponsored by other governmental entities and nonprofit organizations are also eligible for City Days, as determined and approved by the City Administrator. The City anticipates that, given the probable use by City departments and other governmental entities such as SFUSD, the availability of City Days for nonprofit organizations will be limited. The City Administrator shall establish and maintain a nondiscriminatory policy for considering requests for the use of the City Days by nonprofit organizations, as may be amended from time to time. Such policy may include a preference or priority for those events with broad appeal to San Francisco residents and to those organizations that would have difficulty paying the ordinary rental rates for use of Premises or other suitable premises. Notwithstanding the foregoing, every City department, governmental entity and nonprofit organization using a City Day shall be responsible for all costs and expenses relating to the use of the Premises under this Lease, including all indemnities, and shall demonstrate the ability to pay all such costs prior to approval of use of any City Day.

Every City department and other entity that wishes to use the Premises during a City Day shall fill out and submit a request for such use on a form provided by the City Administrator.

EXHIBIT D

Existing Employees

Michael Colter – Facility Manager

Harry Jeong - Assistant Chief Engineer

Joe Williams - Event Attendant

June Jackson-Gratton - Security Supervisor

Steve Schwartz - Security Supervisor

Tyrone Sparrock - Security Supervisor

Paul King - Security Supervisor

EXHIBIT E

Form of Guaranty

GUARANTY AGREEMENT

This GUARANTY AGREEMENT (this "Guaranty") dated as of _____ is made by Another Planet Entertainment, LLC, a Delaware limited liability company ("Guarantor"), to and for the benefit of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Landlord"). Unless otherwise defined in this Guaranty, all initially capitalized terms used in this Guaranty shall have the meanings given to them in the Lease (as defined in Paragraph A of the Recitals, below).

This GUARANTY is made with reference to the following facts and circumstances:

RECITALS

(a) Landlord and BGCA Management, LLC, a Delaware limited liability company, together with any and all of its successors-in-interest as "Tenant" under the Lease, "Tenant"), entered into that certain Lease of certain premises commonly known as the Bill Graham Civic Auditorium, dated for reference purposes as of _____, 2010 (including all exhibits and attachments thereto, and as amended from time to time, the "Lease").

(b) Guarantor will derive material financial benefit from the Lease. As an essential inducement for Landlord to enter into the Lease, Guarantor is entering into this Guaranty, under which Guarantor agrees to guaranty payment and performance of Tenant's obligations under the Lease.

ACCORDINGLY, in consideration of the matters described in the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. Guaranty

1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees to Landlord the due and punctual payment (and not merely the collectability) and performance of all of Tenant's obligations under the Lease (the "Guaranteed Obligations"), as and when the same shall become due and/or payable (but subject to any applicable cure periods provided under the Lease), on the terms provided in this Guaranty. In addition, Guarantor shall pay, and within fifteen (15) days after receipt of Landlord's written request, and shall reimburse Landlord for, all costs and expenses (including, without limitation, collection charges and Attorneys' Fees and Costs (as defined below)) incurred by Landlord (collectively, the "Reimbursement Amount") in connection with the enforcement of Landlord's rights, powers, or remedies under this Guaranty. If any Guaranteed Obligations and/or Reimbursement Amount is not paid within fifteen (15) days after receipt of written demand from Landlord, then such amounts shall bear interest at the lesser of ten percent (10%) per annum or the maximum amount permitted by law, from the date of such written demand through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed).

1.2 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and agrees that: (a) it has received fair and adequate consideration for its execution of this Guaranty; (b) it will derive material financial benefit from Landlord's execution of the Lease; (c) Landlord's agreement to enter into the Lease and to take the actions required in connection with the Lease are in consideration of, and in reliance upon, Guarantor's execution and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this Guaranty other than those expressly set forth in this Guaranty.

1.3 Independent Obligations; Continuing Guaranty. This Guaranty is a primary and original obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and of performance. All rights and remedies existing under this Guaranty are cumulative to, and not exclusive of, any other rights or remedies under contract or applicable law. Any performance by Guarantor of the Guaranteed Obligations before the expiration of any applicable cure period under the Lease shall be deemed a cure of the applicable default by Tenant under the Lease, to the extent of such performance by Guarantor. To the extent the performance by Tenant of any of the Guaranteed Obligations is expressly waived in a writing executed and delivered by Landlord to Tenant, Guarantor shall have the benefit of such waiver; provided, no Guaranteed Obligation shall have been waived, or the performance of such Guaranteed Obligation excused, by any failure or delay in the enforcement of such Guaranteed Obligation by Landlord.

1.4 \$5 Million Guaranty Limit. Notwithstanding anything to the contrary herein, Guarantor's total cumulative payment and performance obligations hereunder shall not exceed Five Million Dollars (\$5,000,000). Any capital call or other payments made by Guarantor to Tenant to enable Tenant to fulfill its obligations under the Lease shall not be deemed a payment or performance under this Guaranty.

2. Condition to Enforcement. Notwithstanding any other provision of this Guaranty, Landlord agrees that it will not seek to enforce this Guaranty unless and until both (a) all applicable notice and cure periods under the Lease have expired, and (b) Landlord has terminated the Lease in accordance with its terms.

3. Waivers by Guarantor.

3.1 Waivers. Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) except as expressly provided in Section 1.1, demand of payment, notice of nonperformance, notice of dishonor, presentation, protest, and indulgences and notices of any kind whatsoever; (c) all right to assert or plead any statute of limitations relating to this Guaranty (as opposed to with respect to the Lease, which are not waived) and Guarantor agrees that any act that tolls any statute of limitations applicable to the Lease will operate similarly to toll the statute of limitations applicable to Guarantor's liability hereunder; (d) any right to require Landlord to proceed against Tenant or any other person or entity liable to Landlord; (e) any right to require Landlord to pursue any other remedy Landlord may have before proceeding against Guarantor; (f) any right to require Landlord to apply to any default any security it may hold under the Lease; (g) any and all right to participate in any security now or later held by Landlord; and (h) any defense that may arise by the reason of: (1) the incapacity, lack of authority, death, disability or other defense of Tenant or any other guarantor; (2) the revocation or repudiation of this Guaranty

by Guarantor; (3) failure of Landlord to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Tenant or any others; (4) any election by Landlord in any proceeding instituted under the United States Bankruptcy Code, as amended (11 U.S.C. Sections 101, et seq.); (5) any borrowing or granting of a security interest under Section 364 of the United States Bankruptcy Code; (6) Landlord's election of any remedy against Guarantor or Tenant; (7) Landlord's taking, modification, or releasing of any collateral or guaranties, or any failure to perfect any security interest in, or the taking of or failure to perfect any other action with respect to any collateral securing performance of Tenant's obligations under the Lease; (8) any amendment or modification of the Lease or related documents, whether or not known or consented to by Guarantor; or (9) any offset by Guarantor against any obligation now or later owed to Guarantor by Tenant, it being the intention of this Guaranty that Guarantor remain liable to the full extent set forth in this Guaranty until the full performance by Tenant of each and every term, condition and covenant of the Lease to be performed by Tenant, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Guarantor. Without limiting the generality of the foregoing, Guarantor expressly waives any and all benefits under California Civil Code sections 2809, 2810, 2819, 2839, 2845, 2846, 2849, 2850, 2855, 2899 and 3433.

Without limiting the foregoing, Guarantor understands and acknowledges that if Landlord exercises any rights against Tenant under the Lease or any related agreements, then the exercise of such rights could impair or destroy any ability that the Guarantor may have to seek reimbursement, contribution or indemnification from Tenant or others based on any right the Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by the Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this section, such potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty based on law or in equity, including but not limited to, in the case of any real property security, Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal.App.2d 40 (1968). By executing this Guaranty, the Guarantor freely, irrevocably, absolutely and unconditionally: (i) waives and relinquishes that defense and agrees that the Guarantor will be fully liable under this Guaranty even though Landlord may exercise any right or remedy under the Lease, including any act judicially or nonjudicially against any real property security if and to the extent of any real property security; (ii) agrees that the Guarantor will not assert that defense in any action or proceeding which Landlord may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by the Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based on or arising out of law or equity, including, without limitation, any one or more of Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure; and (iv) waives any notice of sale or other disposition of any security.

Guarantor acknowledges and agrees that Landlord is relying on the waivers set forth above in entering into the Lease, and that these waivers are a material part of the consideration which Landlord receiving in connection with the Lease.

3.2 Subordination of Subrogation Rights. Until satisfaction in full of all of the Guaranteed Obligations, any right of subrogation on the part of Guarantor shall be in all respects subordinate to all rights and claims of Landlord for all other payments or damages which shall be

or become due and payable by Tenant under the provisions of the Lease. Upon satisfaction in full of all of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of Landlord against Tenant with respect to the Guaranteed Obligations, and Landlord agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided Guarantor shall pay Landlord all costs incurred with respect thereto and that Landlord shall not incur any liabilities in taking any such steps).

4. Consents by Guarantor.

4.1 Consents; No Discharge of Obligations. Without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty, Landlord, by action or inaction, in its sole, absolute and unlimited discretion and without notice to Guarantor may: (i) compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligations; (ii) refuse or fail to enforce all or any portion of Landlord's rights, powers or remedies under the Lease or any related documents; and (iii) deal in all respects with Tenant as if this Guaranty were not in effect. It is the intent of the parties that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety.

4.2 Payments to Other Persons. Landlord shall be under no obligation to marshal any assets in favor of Guarantor or against, or in payment or performance of, any or all of the Guaranteed Obligations. If all or any part of any payment to or for the benefit of Landlord in respect of the Guaranteed Obligations is invalidated, declared to be fraudulent or preferential, set aside, or required for any reason to be repaid or paid over to a trustee, receiver or other person (a "trustee") under any insolvency law or any other law or rule of equity (collectively, "set aside"), to the extent of that payment or repayment, the Guaranteed Obligations (or the part thereof) intended to have been satisfied shall be revived and continued in full force and effect as if that payment had not been made, and Guarantor shall be primarily and jointly and severally liable for that obligation, provided that nothing hereunder shall preclude Guarantor from obtaining a refund from a trustee.

4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Guarantor, or any obligation of Guarantor under any other agreement or applicable law that may now or hereafter exist in favor of Landlord. The liability of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or realization upon the security, if any, Landlord may at any time possess with respect to the Guaranteed Obligations. Nothing herein shall limit the obligations of Tenant under the Lease.

4.4 Recourse. Landlord shall have the right to seek recourse against Guarantor to the full extent provided for in this Guaranty, which right shall be absolute and shall not in any way be impaired, deferred, or otherwise diminished by reason of any inability of Landlord to claim any amount of such Guaranteed Obligation from Guarantor or Tenant as a result of bankruptcy or otherwise, including, but not limited to, any limitation on Landlord's claim from Guarantor or Tenant under section 502(b)(6) of the United States Bankruptcy Code. No election to proceed in one form of action or proceeding, or against any person, or on any obligation, will constitute a

waiver of Landlord's right to proceed in any form of action or proceeding or against other persons unless Landlord has expressly waived that right in writing.

4.5 Guarantor's Responsibility. Guarantor assumes the responsibility for being and keeping informed of the financial condition of Tenant and any other guarantor, person or entity liable on, or with respect to, any of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, and confirms that Landlord shall have no duty to advise Guarantor of any information regarding such condition or any such circumstances, whether or not materially adverse. Guarantor waives all rights and defenses based on Landlord's failure to perform any such duty.

5. Representations and Warranties of Guarantor

5.1 Representations and Warranties. Guarantor represents, warrants and covenants that it has full power and authority to execute, deliver and perform its obligations under this Guaranty, and that execution, delivery, and performance has been duly authorized by all requisite action on its part.

5.2 Independent Investigation. Guarantor has performed its own independent investigation as to the matters covered by this Guaranty.

6. Termination of Guaranty

This Guaranty shall terminate on the earlier of (a) the date that is sixty (60) days following the expiration or earlier termination of the Lease, (b) the date that Tenant assigns its interest in the Lease in accordance with Section 17.8 of the Lease (provided the conditions to Tenant's release in Section 17.8 of the Lease are in fact met); provided in each case above the Guaranty shall continue with respect to (i) claims hereunder that relate to the period before such expiration, termination or assignment and release, and (ii) any indemnity or other obligation of Tenant under the Lease that survives any such termination, expiration or assignment and release by its terms.

7. Notices

A notice or communication under this Guaranty by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

In the case of a notice or communication to Landlord:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Fax No.: (415) 552-9216

With a copy to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance
Reference: Bill Graham Civic Auditorium
Telefacsimile: (415) 554-4755

And in the case of a notice or communication sent to Guarantor:
c/o Another Planet Entertainment, LLC
1815 Fourth Street, Suite C
Berkeley, California 94710
Attn: Gregg W. Perloff

For the convenience of the parties, copies of notices may also be given by facsimile. Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Guaranty will be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

8. General Provisions

8.1 Successors and Assigns. This Guaranty shall be binding upon Guarantor, its permitted successors, representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns; provided, however, that Guarantor may not assign or transfer its obligations under this Guaranty without the prior written consent of Landlord.

8.2 Amendments. This Guaranty may be amended or modified only by a written instrument executed by Landlord and Guarantor.

8.3 Waivers. No action taken pursuant to this Guaranty by Landlord shall be deemed to be a waiver by that party of Guarantor's compliance with any of the provisions hereof. No waiver by Landlord of any breach of any provision of this Guaranty shall be construed as a waiver of any subsequent or different breach. No forbearance by Landlord to seek a remedy for noncompliance hereunder or breach by Guarantor shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

8.4 Continuation and Survival of Covenants. All covenants by Guarantor contained herein shall be deemed to be material and shall survive any termination of the Lease or portion thereof if the obligations thereunder have arisen and are not satisfied before such date.

8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the Lease, Guarantor agrees that all actions or proceedings arising directly or indirectly under this Guaranty may, at the sole option of Landlord, be litigated in courts located within the City and County of San Francisco, and Guarantor expressly consents to the jurisdiction of any such court, and consents that any service of process in such action or proceeding may be made by personal service upon Guarantor wherever Guarantor may then be located, or by certified or registered mail directed to Guarantor at the address set forth in this Guaranty for the delivery of notices.

8.6 Merger of Prior Agreements. The parties intend that this Guaranty and the Lease shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Guaranty shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.

8.7 Interpretation of Guaranty. Unless otherwise specified, whenever in this Guaranty reference is made to any Section, or any defined term, the reference shall be deemed to refer to the Section or defined term of this Guaranty. Any reference to a Section includes all subsections and subparagraphs of that Section. The use in this Guaranty of the words "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. Any titles of the several parts and sections of this Guaranty are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The terms "Paragraph" and "Section" may be used interchangeably. The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. Defined terms and variants thereof shall have the same definition. References to days, months and years mean calendar days, months and years unless otherwise specified. References to any law, specifically or generally, will mean the law as amended, supplemented or superseded from time to time. The provisions of this Guaranty shall be construed as a whole according to their common meaning and not strictly for or against either party in order to achieve the objectives and purposes of the parties, regardless of which party drafted this Guaranty.

8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding to enforce any provision of this Guaranty or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Guaranty, then the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Guaranty, including, without limitation, court costs and reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Guaranty shall be recoverable separately from and in addition to any other amount included in such

judgment, and such Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Guaranty and to survive and not be merged into any such judgment. For purposes of this Guaranty, the reasonable fees of attorneys for Landlord shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which Landlord's attorneys' services were rendered who practice in the City of San Francisco. "Attorneys' Fees and Costs" means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

8.9 Severability. Invalidation of any provision of this Guaranty, or of its application to any person, by judgment or court order, will not affect any other provision of this Guaranty or its application to any other person or circumstance, and the remaining portions of this Guaranty will continue in full force and effect, unless enforcement of this Guaranty as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Guaranty.

8.10 Tangible Net Worth. If at any time during the period this Guaranty is in effect, the Tangible Net Worth of Guarantor falls below Five Million Dollars (\$5,000,000), then Guarantor shall notify Landlord as soon as reasonably practicable. Within ten (10) days after delivery of such notice, Tenant or Guarantor shall provide Landlord with an additional or substitute guaranty in favor of Landlord (in the form of this Guaranty) from a person or entity having a Tangible Net Worth of at least Five Million Dollars (\$5,000,000). Failure to give such notice shall not relieve Guarantor of its obligations hereunder, and failure to provide the additional guaranty(s) required will be a default hereunder. As used herein, "Tangible Net Worth" means the total assets of Guarantor minus any amounts attributable to (i) goodwill, (ii) intangible items such as unamortized debt discount and expense, patents, trade and service marks and names, copyrights and research and development expenses except prepaid expenses, (iii) reserves not already deducted from assets and (iv) obligations that should, under GAAP, be classified as liabilities on Guarantor's balance sheet, including all indebtedness.

IN WITNESS WHEREOF, the undersigned, being duly authorized, has executed and delivered this Guaranty as of the date first written above.

GUARANTOR:

_____, a

By:
Name:
Title:

By:
Name:
Title:

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:
City Administrator

By:
Director of Property

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
of meeting date 2:56

AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Kim

Subject:

Real Property Lease Amendment - BGCA Management, LLC - Bill Graham Civic Auditorium, 99 Grove Street - \$25,000 per Month Base Rent]

The text is listed:

Resolution authorizing and approving an Amendment to Lease with BGCA Management, LLC, a Delaware limited liability company, for Bill Graham Civic Auditorium, at 99 Grove Street, increasing monthly base rent to \$25,000.00, requiring tenant to be responsible for all utilities and a minimum of \$10,250,000 in building improvements, new participation rent calculation, and other changes as set forth in Amendment, all other Lease terms to remain the same, to commence upon approval by the Board of Supervisors and Mayor.

Signature of Sponsoring Supervisor: [Signature]

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: BGCA Management, LLC	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
1. N/A 2. Gregg W. Perloff, CEO; Sherry Wasserman, President; Steve Welkom, COO/Secretary; Glenn Allen Scott, Vice President 3. Another Planet Entertainment, LLC – sole owner 4. N/A 5. N/A	
Contractor address: 1815 Fourth Street, Suite E, Berkeley CA 94710	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$300,000/year, plus \$3,500 per non-ticketed event main hall, \$2,500 per non-ticketed event Polk Hall
Describe the nature of the contract that was approved: Amendment to Lease	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed